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THE LAW
OF
REGISTRATION OF TITLES
IN ONTARIO,
BEING
AN ANNOTATION OF
"THE REGISTRY ACT,"

(REVISED STATUTES OF ONTARIO, CAP. CXL)

TOGETHER WITH
A COLLECTION OF PRACTICAL FORMS,
TARIFF OF FEES, ETC.

BY EDWARD HERBERT TIFFANY,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Vigilantibus, non dormientibus, jura subveniunt.

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of our
ERBERT

TO
THE HONOURABLE GEORGE WILLIAM BURTON,
ONE OF THE JUSTICES OF THE COURT OF APPEAL.

THIS VOLUME IS
(WITH HIS PERMISSION)
RESPECTFULLY DEDICATED

AS A SLIGHT TRIBUTE TO HIS PERSONAL WORTH AND TO THE EMINENT
ABILITIES WHICH HAVE ADORNED HIS CAREER AT THE BAR
AND ON THE BENCH, BY HIS FORMER PUPIL,

THE AUTHOR.

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PREFACE.

THE prominent position which the Registry Law occupies in the juridical system of this Province, the influence which it necessarily wields, the innumerable daily transactions relating to real estate, and the fact that no modern Canadian work exists which treats especially upon this important branch of our law, have prompted the preparation and publication of the following pages.

It is true that two manuals upon Registration have been published, the one by W. A. Sladden, Esq., in 1857, and the other by Samuel G. Woods, Esq., Barrister-at-Law, in 1866. The former manual has long since become obsolete ; while the latter, published immediately after the coming into effect of the Registry Act of 1865, which imported such material and radical changes in the law and procedure of Registration, is not of sufficiently late date to satisfy the requirements of either the profession or Registrars, although it is a valuable epitome of the law as it stood at the time it was published.

The sixteen years which have elapsed since the introduction of the Registry Act of 1865 have been fruitful in important decisions emanating from our Courts bearing upon the construction and effect of that Act, and of the subsequent statutes relating to Registration of titles. To collate these decisions, and those rendered under the former Registry Laws in force in this Province, and by reference thereto to illustrate and explain the principles regulating the present Registry Act has been the design of this work. In furtherance of this object, the decisions

of the Courts of the sister Provinces of Quebec, Nova Scotia and New Brunswick, and of the English, Irish and American Courts under their several Registry Acts have been examined, and noted, wherever they are in point.

A comprehensive collection of useful forms, a list of those instruments which are required to be registered under the provisions of particular enactments (other than those of a purely private or local character), together with a tariff of fees, &c., &c., will, it is anticipated, contribute to the practical utility of this volume. That this work may be found to be of service to his professional brethren, to those gentlemen who fill the responsible office of Registrars of Deeds, and to those persons who engage in the practice of conveyancing, is the sincere desire of the author.

Finally, the author has to express his regret at the delay in the publication of this volume, which is solely attributable to the numerous and, in the majority of cases, unavoidable interruptions to which he has been subjected.

E. H. T.

Alexandria, March 14, 1881.

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INTRODUCTION.

No general system of registration existed throughout England, on Oct. 15th, 1792, upon which day the laws of that country relating to civil property and rights, other than those of a purely local or limited character, were introduced into this Province by the Stat. 32 Geo. 3, c. 1. In the early part of the last century registration was established in the counties of York and Middlesex, but it was never extended beyond those localities. The sole enactment relating to the recording of deeds was the Statute of Enrolments (1), which was intended to counteract the evil effects resulting from the practice of secret conveyances under the Statute of Uses (2). It provided that every bargain and sale of an inheritance or freehold should be by a deed indented and enrolled within six lunar months from its date, either in one of the Courts of Westminster, or before the Justices and Clerk of the Peace in the county wherein the lands affected were situated. This Statute, as one of the laws of England relating to civil property and rights, came into force in this Province by virtue of the Statute 32 Geo. 3, c. 1. Fully aware of the inconvenience caused by non-registration, and the numerous opportunities for the perpetration of fraud and injustice which the want of a general system of registration of documents of title gave birth to; and also recognizing the pressing necessity of affording every facility to transactions in real estate in a young country, those, to whose hands the working of the new constitution had been entrusted, lost no time in introducing a general

(1) 27 Henry 8, c. 16. (2) 27 Henry 8, c. 10.

registry law; and in the fourth session of the first Parliament of the Province, the foundations of the present system of Registration, which we at present enjoy, were laid by the Act 35 Geo. 3, c. 5, known as the Registry Act of 1795. Its leading provisions were mainly based upon the York and Middlesex Registry Acts. Registration was, however, made optional, so long as no memorial had been entered in the Registry Office, but so soon as that event occurred, the title became what has been termed "a registered title," and thenceforth it was rendered compulsory to register every instrument affecting the title, in order to retain priority as against subsequent purchasers and mortgagees for value (1). Provision was made for the establishment of Registry Offices, the appointment, removal and duties of Registrars, and the mode of registration. Registration of a will, if effected within six months after the date of the testator's death, was equivalent to registry immediately after the death. Leases at rack rent, or where the term demised did not extend beyond twenty-one years, provided actual possession and occupation went along with the lease, were excepted from the operation of the statute. The Statute of Enrolments was not superseded by the Registry Act, and, in some instances, lands having been conveyed by deeds of bargain and sale without enrolment, it was enacted by the Stat. 37 Geo. 3, c. 8, which had a retroactive as well as a prospective effect, that registration in the proper Registry Office would validate such deeds, to the same extent and effect as if they had been duly enrolled. Reception of memorials of instruments executed in Great Britain, Ireland and the Colonies was provided for by the Act 58 Geo. 3, c. 8. The Statute of Enrolments was virtually repealed by the Act 4 Wm. 4, c. 1, s. 47, which declared that neither enrolment nor registration was essential to the validity of a deed of bargain and sale, although registration would be necessary to

(1) See p. 207 *post*.

preserve its priority, as in the case of other instruments (1). This Act operated retrospectively (2). Certificates of discharge of mortgages given subsequent to default in payment were declared by the Act 4 W. 4, c. 16, to operate as valid discharges and reconveyances.

A revision and amendment of the Registry Laws was effected by the Act 9 Vic., c. 34, known as the Registry Act of 1846, which first admitted judgments of Courts of Record to the benefits of registration.

The necessity for attendance on the part of the witness to the memorial before the Registrar or his Deputy under prior statutes was dispensed with, and provision was made for proving execution where the witness was permanently residing without the Province. The period allowed for the registration of wills was extended to twelve months. Leases at rack rent were no longer excepted from the operation of the Registry Laws, and it was sufficient if actual possession accompanied a lease under twenty-one years. Registration of a deed of bargain and sale was declared to be equivalent to enrolment. Deeds by corporations were admitted to registration without other proof than the affixing of the corporate seal. Plans of Town and Village lots were required to be filed.

County Councils were charged with the erection of Registry Offices, and the duty of Registrars upon a separation of registration divisions was defined. By the Act 11 & 12 Vic., c. 16, certain doubts relative to discharges of mortgages were removed. The Act 13 & 14 Vic., c. 63, gave to the registration of judgments the same validity as the docketting thereof would have produced. It also declared what effect a registered judgment would possess, and defined the remedies of the judgment creditor. Registration was no longer allowed to be optional, but the

(1) See *Doe d. Adkins v. Atkinson* 4 Q. B. O. S. 140.

(2) *Rogers et al. v. Barnum* 5 Q. B. O. S. 352; *Doe d. Loucks v. Fisher*, 2 U. C. R., 470; see *Doe d. Spafford v. Brown et al.* 3 Q. B. O. S., 92.

rights of equitable mortgagees were preserved. Tacking was abolished, and registered instruments took priority according to date of registry—where unregistered, priority of time of execution governed. The portion of the Registry Act of 1846 relating to registration and enrolment of deeds of bargain and sale was repealed. Registration was declared to constitute in Equity notice to persons claiming interests subsequent to such registry. Certain judges and other persons were empowered to take affidavits of execution of instruments executed in Lower Canada.

Bonds and instruments creating debts to the Crown were required by the Act 14 & 15 Vic., c. 2, to be registered in the office of the Clerk of the Court of Queen's Bench in Toronto, in order to maintain priority, and the lands bound thereby could only be released by an Order in Council. By the Act 16 Vic., c. 182, s. 66, deeds of sale for taxes before 1851 under the Act 6 Geo. 4, c. 7, were authorized to be registered, notwithstanding the repeal of that Act. Changes in the territorial divisions of the Province necessitated the passage of the Act 16 Vic., c. 187, which defined the duties of Registrars upon the formation of new divisions. Registry Books were to be thereafter provided by the County, instead of by the Province, as formerly. But one memorial was required of an instrument embracing lands situate in several localities in the same County. Further provision was made for the registration of memorials of instruments executed within the Province, but without the County where the lands affected were situate. Powers of Attorney were, for the first time, admitted to registration.

By the Act 18 Vic., c. 127, unregistered judgments were declared to form no lien upon lands, and certificates of bills filed, or proceedings taken, in the Court of Chancery were required to be registered, in order to affect persons with notice thereof. The registration of decrees was provided for, and the method of registering memorials of

instruments executed without the Province improved upon. Rules and orders of the Superior and County Courts directing the payment of money were admitted to registration by the Act 22 Vic. 33, s. 17 (1859).

Upon the consolidation of the Provincial Statutes in 1859, the various enactments relating to the registration of instruments affecting titles were consolidated, and incorporated in the 49th chapter of the Con. Stat. of U. C., but no amendments or additions of any importance were made.

The provisions relating to the registration of judgments were repealed by the Act 24 Vic., c. 41, and as that portion of the Registry Law has long since become obsolete, reference thereto has been omitted in the following annotation. The Act took effect on Sept. 1st, 1861, but preserved the rights of any registered judgment creditor who should issue before that date a writ of execution against the lands of the judgment debtor. A reference in the Act to discharge of mortgages led to the passage of the Act 24 Vic., c. 21, which confirmed discharges registered since May 18, 1861, and provided for their future registration.

The year 1865 marked a new era in the history of registration in this Province. The inconvenience and imperfect machinery of the system theretofore in vogue demanded a change in the mode of registration. By the Act 29 Vic., c. 24, all former enactments were repealed, their better features being, however, preserved and recast in the new statute. Registration at full length was substituted for the former method, except where the instrument was executed before Jan. 1st, 1866. An enlarged construction was placed upon the instruments capable of and requiring registration. The establishment and extension of Registry Offices, the appointment, removal and duties of Registrars, and the character and number of books of office, were duly provided for. Crown grants were admitted to registry. Witnesses were compelled to make affidavits of execution.

Proof of execution when the witness was dead, or absent from the Province, was to be made before the Judge of the County Court, and not before the Quarter Sessions. The registration of Powers of Attorney and substitutions thereof was improved upon, and notarial copies of certain instruments executed in Lower Canada were allowed to be registered.

Priority of registration was in all cases to prevail, in the absence of actual notice. The exemption which had theretofore existed in favor of equitable mortgages, &c., was abolished, and the Act was extended to all leases exceeding seven years, or where actual possession did not accompany a lease.

Ample provision was made for the registration of certain municipal by-laws, the filing of plans and amendment thereof, and for re-registration in case of the loss or destruction of Registry Books or papers. Certain defects in registration were remedied, and to insure the efficient working of the new system the appointment of an Inspector of Registry Offices was provided for, and his duties defined. The Act 14 & 15 Vic., c. 9, hereinbefore referred to, requiring registration in the Court of Queen's Bench of bonds, &c., creating debts to the Crown was repealed by the Act 29 & 30 Vic., c. 43, and these instruments were placed upon the same footing as obligations between private persons, an exception being made in favor of those securities, which had been registered prior to the repeal.

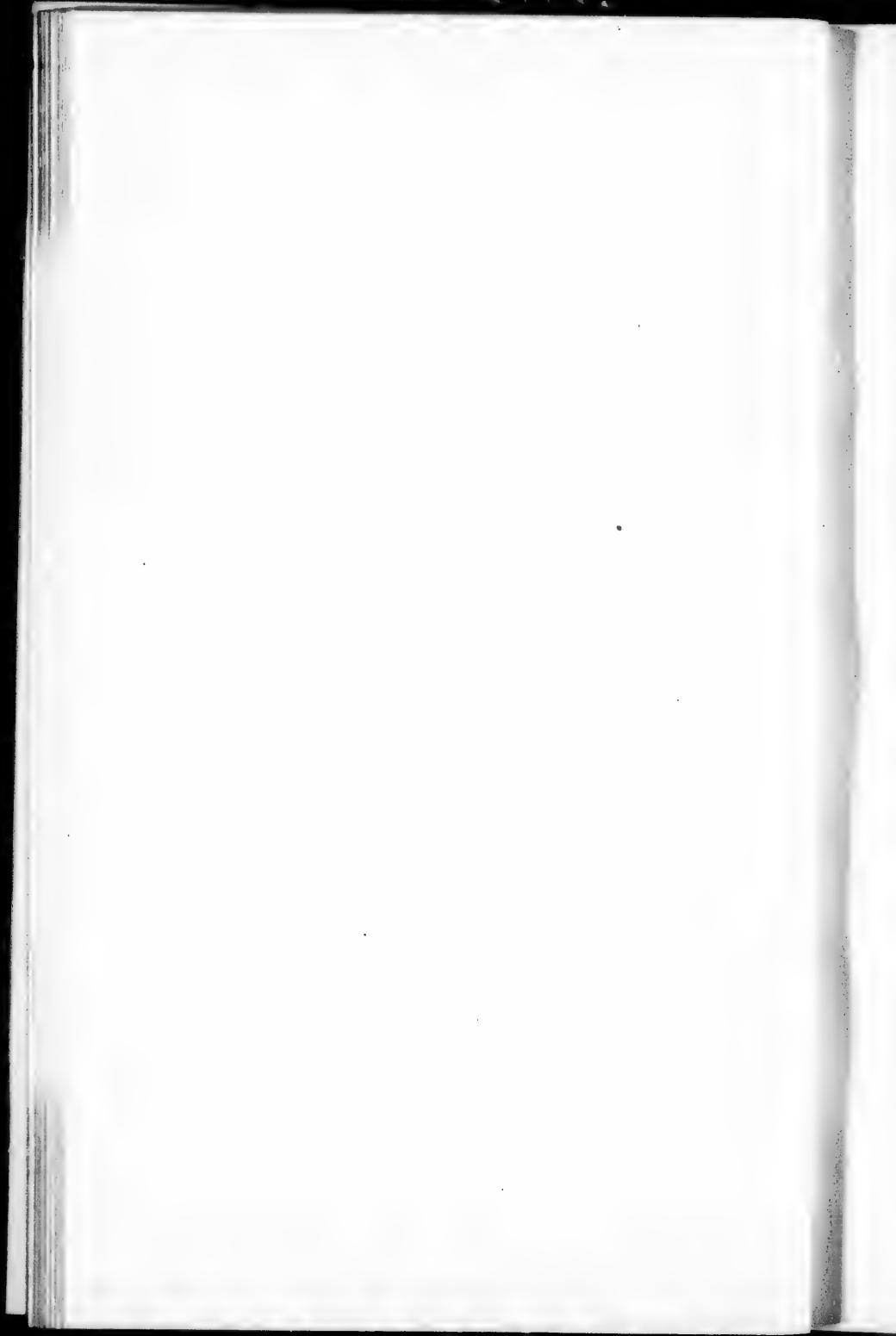
The changes brought about by the Confederation of the various Provinces naturally created an increase of legislation. The Act 29 Vic., c. 24, was repealed by the Act 31 Vic., c. 30, which was, however, substantially a re-enactment, of the repealed statute. Certificates of discharge of mortgage by married women were, by the Act 32 Vic., c. 9, authorized to be registered without a certificate of examination (1). Prothonotarial copies of instruments

(1) See 34 Vic., c. 35.

executed in the Province of Quebec, were admitted to registration by the Act 34 Vic., c. 25 ; and the registration of a deed containing lands in several counties by means of certified copies thereof was permitted by the Act 34 Vic., c. 26. The liens held by the Crown under bonds, &c., registered in the Courts of Queen's Bench, were finally abolished by the Act 36 Vic., c. 6, s. 5. The Act 36 Vic., c. 17, made provision for proof where the witness should become insane, idiotic, &c. Certain defect in affidavits were declared not to invalidate registration, and registration was constituted notice at Law as well as in Equity, notwithstanding any defects in the proof for registry. Prior defective registrations were validated. Sheriffs and Bailiffs were empowered by the Act 38 Vic., c. 17, to execute certificates of discharge of mortgages seized under execution. Some amendments of minor importance were introduced by the Act 39 Vic., c. 25, which also effected changes in the holidays allowed to Registrars, and extended their hours of attendance.

Upon the revision of the Provincial Statutes in 1877, the prior enactments were collated, and arranged in the compendious form they now appear in. Since that period but two amendments have been introduced: the one by the Act 42 Vic., c. 20, authorizing the registration of notices of sale of mortgaged premises, in default of payment—the other by the Act 44 Vic., c. 10, which dispenses with the necessity of the husband of a married woman becoming a party to, or executing, a certificate of discharge of mortgage given by her.

In the foregoing condensed account of the rise, progress and development of the system of registration in this Province reference to matters of minor import, though connected with that system, has, through want of space, been omitted, but in the following pages they will be alluded to in their appropriate places.



REVISED STATUTES OF ONTARIO.

CHAPTER CXI.

An Act respecting the Registration of Instruments relating to Lands.

Interpretation:

"Instrument," "Land,"
"Will," "County," s. 2.

Registry Offices, ss. 3-5.

Registrars and Deputies:

Appointment, security of, &c.,
ss. 6-19.

Duties, ss. 20-24.

Books of Office:

To be furnished by County,
ss. 25-27.

Transfer of, upon alteration
in limits of the Registration
Division, ss. 28-31.

Copies of, when too old for
use, s. 32.

Abstract Indexes, ss. 33-35.

Alphabetical Indexes, ss. 34,
35.

Instruments which may be reg-
istered, ss. 36, 37.

Proof for Registration, ss.
38-54.

Manner of Registering, ss.
55-60.

Registration of—

Crown Grants, s. 61.

Orders in Council, s. 62.

Wills, s. 63.

Other Instruments, s. 64.

Instruments executed before
1st Jan. 1866, ss. 65, 66.

Discharges of mortgages, ss.
67-72.

By-laws, s. 73.

Effect of Registering or omit-
ting to register, ss. 74-81.

Unregistered instruments af-
ter grant from the Crown
void against subsequent re-
gistered purchaser, s. 74.

Wills not registered within
twelve months after death,
s. 75.

Deeds on sales of taxes not
registered eighteen months
after sale, ss. 76-77.

Registration as notice, ss.
78-80.

Equitable liens invalid as
against registered instru-
ments, s. 81.

Tacking not allowed as
against registered instru-
ments, s. 81.

Registration of plans, ss. 82-85.

Provisions for re-registration in
case of loss, &c., of registry
books, s. 86.

Defects in registration, ss.
87-90.

List of Patents to be furnished
to Registrar, s. 91.

Offences, 29 V., c. 24, ss. 80-81.

Fees of Registrars, ss. 92-105.

Inspector of Registry Offices,
ss. 106, 107.

Act not to aid construction of
other Acts, s. 108.

THE REGISTRY ACT.

(Revised Statutes of Ontario, Chapter CXI.)

CHAPTER I.

PREAMBLE.

§1. Short Title.

§2. Interpretation clause.

(1.) "Instrument."

- (a.) Crown Grants ;
- (b.) Orders in Council ;
- (c.) Deeds and Conveyances ;
- (d.) Mortgages and Assignment of Mortgage
- (e.) Certificate of Discharge of Mortgage ;
- (f.) Assurance ;
- (g.) Lease ;
- (h.) Bond ;
- (i.) Releases ; Discharges ;
- (j.) Power of Attorney, or substitutions thereof ;
- (k.) Bonds or Agreements for sale ;
- (l.) Letter of Attorney ;
- (m.) Will ;
- (n.) Probate of Will, &c. ;
- (o.) Grant of Administration with the will annexed ;
- (p.) Municipal Road By-laws ;
- (q.) Certificates of proceedings at Law or Equity ;
- (r.) Certificates of payment of Taxes ;
- (s.) Sheriffs' and Treasurers' Deeds ;
- (t.) Every Contract in Writing ;
- (u.) Proceedings in Lunacy, Insolvency, &c. ;
- (v.) Other Instruments ;

(2.) "Lands."

(3.) "Will."

(4.) "County."

Chapter 1. Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :

Sec. 1. 1. This Act may be cited as "*The Registry Act.*"

Short
title.

The adoption of brief and concise titles to statutes of general utility is comparatively modern, but is an improvement upon the former method. A short title, for citation purposes, was not conferred upon any statute relating to registration, until the passage of the Registry Act of 1865, which was designated the "Registration of Titles, (Upper

Canada) Act," (1). Upon the repeal of that Statute by the Registry Act of 1867-8, the latter Act was designated the "Registration of Titles (Ontario) Act." (2)

2. In the construction of this Act

(1.) "Instrument" shall include every Crown grant; Order in Interpretation Council of the Dominion or of this Province; deed; conveyance; mortgage; assignment of mortgage; certificate of discharge of mortgage; assurance; lease; bond; release; discharge; power of attorney, or substitution thereof, under which any such deed, mortgage, conveyance, assurance, discharge of mortgage or other instrument is executed; bonds or agreements for sale or purchase of land; letter of attorney; will; probate of will; grant of administration with the will annexed; municipal road by-law; certificate of any proceedings in any Court, decree of foreclosure, and every other certificate or decree of any Court affecting any interest in or title to land; also, certificates of payment of taxes granted under the corporate seal of the County, City, or Town by the Treasurer; every Sheriff's and Treasurer's deed of lands sold by virtue of his office; every contract in writing; every Commission and proceeding in Lunacy, Bankruptcy and Insolvency; and every other instrument whereby lands or real estate may be transferred, disposed of, charged, incumbered, or affected, in any wise, in Law or in Equity, affecting land in Ontario.

(a.) No provision existed for the registration in Crown Grants, Registry Offices, of Patents from the Crown, prior to the Registry Act of 1865. Lists of Patents issued being annually transmitted to the Registrar of each Registry Division by the Commissioner of Crown Lands, and Provincial Registrar respectively. Since the passage of that Act, the Provincial Registrar is required to transmit quarterly returns to each Registrar. See notes to sections 61 and 91 *post*.

(b.) Under the authority of a number of Dominion Orders in Council, and Provincial Statutes, Orders in Council, affecting real estate, may be passed by the Governor General in Council, and Lieutenant-Governor in Council. For example, it is enacted by the Act 38 Vic. (D.) cap. 13, that, upon the satisfaction of any security upon real estate held by the Crown, the Governor General may, by order in Council, declare the

(1) 29 Vic., c. 24, sec. 83.

(2) 31 Vic., c. 20, sec. 86.

same to be satisfied ; a duly certified copy of such Order in Council operating as a release of such security from any claim of the Crown thereon. Also, under Rev. Stat. (Ont.) cap. 60, the real estate of an Intestate, dying without any known relatives in Ontario, may be sold, or otherwise disposed of, by the Lieutenant-Governor in Council, by an Order in Council. Notwithstanding that Orders in Council of this nature could be passed, it was not until the passage of 40 Vic. c. 8, s. 40 (1), that any provision was made for their registration. See notes to section 62 *post*.

Deeds and Conveyances.

(c.) The words "all deeds and conveyances" extend to every species of deed or instrument by which lands may be conveyed or affected. The word "conveyance" includes a feoffment, grant, lease, surrender, or other assurance of land (2) ; it is, however, not confined to instruments under seal (3).

Mortgage and Assignment of Mortgage.

(d.) The word "mortgage" includes every instrument by which land is conveyed, assigned, pledged or charged, as security for the repayment of money, or money's worth lent, and to be re-conveyed, re-assigned or released in satisfaction of the debt. (4) A writing accompanying a deposit of will deeds by way of pledge, or mortgage, is capable of registration (5.)

Certificate of Discharge of Mortgage.

(e.) The efficacy of a certificate of discharge as a reconveyance lies in its registration, when, by force of the Statute, it operates as a re-conveyance of the legal estate ; as, until then, it is merely

(1) Incorporated with sec. 62, *post*.

(2) R. S. Ont., cap. 98 ; Neve v. Pennell, 2 Hem. & M., 170 ; In re Hamilton, 9 Ir. Chy. 512.

(3) In re Wrights' Mortgage Trusts, 43 L. J., Ch. 66, per Malins, V.-C. ; s. c. 16, L. R. Eq., 41, 47.

(4) R. S. (Ont.), c. 98.

(5) Neve v. Pennell, 2 Hem. & M., 170 ; but see contra, Harrison vs. Armour, 11 Gr., 308.

evidence of payment (1). See further notes to sections 67-72 *post*.

(f.) This is a comprehensive term, including, as it does, every instrument by which land may be conveyed or transferred (2). Assurance.

(g.) A lease for a term not exceeding seven years, provided the actual possession goes along with such lease, is not required to be registered, in order to maintain its priority over subsequent purchasers or incumbrancers. This subject is referred to more fully in the explanatory notes to section 37 *post*. Lease.

(h.) "Bonds" within the contemplation of this Bond Act are those relating to real estate. A bond, with a penalty, conditioned to convey lands upon the payment of a certain price, is deemed in Equity as equivalent to an agreement to convey such lands, upon payment of the price; and the obligor is not at liberty to exercise the option of paying the penalty, notwithstanding that the bond is conditional (3).

(i.) A "Release" is the extinguishment of a right or interest in lands to another, who has an estate in possession in the same lands (4), and should be evidenced by deed. "Discharges" need not be under seal, and apply equally to a release of personal rights and obligations, as well as to interests in lands. Releases and Discharges.

(j.) See the remarks upon sections 50-52 *post*. Powers of Attorney or distributions thereof.

(k.) Agreements and bonds for the sale of real estate, being capable of specific performance through the medium of a Court of Equity, are appropriate subjects for registration. Bonds or Agreements for sale.

(1) *Sidey v. Hardcastle*, 11 U. C. R., 168, per Burns J.; see also, *Lee et al. v. Morrow*, 25, U. C. R., 604; *Trust and Loan Co. v. Gallagher*, 8 P. R. 97.

(2) *Tomlinson's Law Dictionary*.

(3) *Logan v. Wienholt*; 7, *Bligh N. R.* 1, 49, 50; *Chilliner v. Chilliner*, 2 *Ves. Sr.*, 528; *Long v. Bowring*, 33 *Beav.*, 585.

(4) *Watkins Convey*, 9 *Ed.*, 331.

- Letter of Attorney. (l.) A convertible term for "power of attorney," but usually employed in matters connected with commercial interests.
- Will. (m.) "Will" more properly refers only to "devises" of realty; the word "testament" relating exclusively to personalty.
- Probate of will. (n.) "Probate" is the official evidence of the will having been duly proved in the proper Court. See section 2, ss. 3, and sections 63 and 75 *post*.
- Grant of Administration with will annexed. (o.) Administration with the will annexed is granted where the testator omits to appoint an executor; or, having appointed one, the appointment fails from the refusal of the executor to act, his death in the lifetime of the testator, or where he dies intestate after proof, but before he has fully administered (1).
- Municipal Road By-laws. (p.) This only refers to those by-laws, under the authority of which any street, road, or highway has been, or may be opened upon any private property. See section 73 *post*.
- Certificates of proceedings in Court of Chancery. (q.) Such certificates were first required to be registered under the Acts 18 Vic. cap. 127 and 20 Vic. cap. 56, in order to affect any person, not a party to the proceedings, with notice. No certificate is required to be registered of a suit or proceeding upon the foreclosure of a registered mortgage. Orders and decrees for alimony can be registered (2).
- Certificates of payment of Taxes. (r.) It will be noticed that the certificate must be granted by the Treasurer of the "County, City or Town" under the Corporate Seal. Certificates granted by Township Treasurers are not included. Under "The Assessment Act" (3), after the statement of arrears of taxes has been transmitted

(1) Wms. on Exors., 461.

(2) R. S. (Ont.), c. 40, s. 44.

(3) R. S. (Ont.), c. 180.

by the Township Treasurer to the County Treasurer, the latter is alone entitled to receive payment of such arrears, and to grant receipts therefor (1). He is also entitled to receive payment of arrears and costs from the owner desiring to redeem lands sold by the Treasurer, within the period allowed by that Statute (2). The Treasurer is obliged to keep a triplicate blank receipt book, and on receipt of any sum of money for taxes, to deliver to the party making such payment, one of such receipts, delivering the second of the set to the County, City or Town Clerk, and retaining the third of the set in his book. For forms of such receipts or certificate see appendix B.

(s.) The registration of deeds by these officials is referred to in the remarks upon sections 76 and 77 *post*. Sheriff's
and Treas-
urer's
Deeds.

(t.) This term is unintentionally too broad, as it is, for registration purposes, confined only to such as affect real estate, or interests therein. The word "writing" will include lithography (3). Every con-
tract in
writing.

(u.) Proceedings in lunacy are regulated by Rev. Stat. Ont., cap. 40, sec. 57-72, and by the consolidated orders of the Court of Chancery published in 1868, Nos. 517 *et. seq.* Proceed-
ings in
Lunacy,
Insolv-
ency, &c.

As to Bankruptcy and Insolvency vide 38 Vic. (D.) c. 16 and amending Acts.

(v.) The concluding clause of this subsection is comprehensive enough, to include, not only those instruments hereinbefore specifically referred to, but also every other instrument or document, which, directly or indirectly, affects interests arising out of, or connected with, real estate. With the exception of that class of leases mentioned in section 37 Other
Instru-
ments.

(1) R.S. (Ont.) c. 180, sec. 116.

(2) *Ib.*—Sec. 137, s.s. 2, and sec. 147.

(3) Reg. v. Middlesex (Registrar) 7 Q. B. 156.

post, the Act contemplates the registration of all instruments, deeds and conveyances; whether founded upon voluntary, valuable or good considerations (1), and whether legal or equitable in their nature or effect (2).

"Land." (2.) "Land" shall include lands, tenements, hereditaments, appurtenances and real estate.

What is
comprised
in the
term
"land."

Briefly put, the word "land" comprises, not only real estate in the popular acceptance of the term, but also all freehold tenements, hereditaments, corporeal or incorporeal, or any undivided share or part therein, and any estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand therein, thereon and thereout, whatsoever, whether at law, or in equity, and whether in possession or expectancy.

Sale of
Grass.

An agreement for the sale of growing grass, growing timber, or underwood, not made with a view to their immediate severance and removal from the soil, and delivery as chattels to the purchaser, is a contract for the sale of an interest in land (3).

Sale of
Growing
Timber
within
Registry
Act.

Growing timber is so far real estate, that, to be severed from the inheritance by deed or devise, the conveyance, or will, must be duly registered to pass the interest intended to be conveyed (4). The decision in this case was affirmed, and it was held that timber was so far real estate that a conveyance of it by the owner of the fee is within the Registry Acts (5).

(1) *In re Flood* 13, Ir. Ch. 312; *Drew v. Lord Norbury*, 3 J. and L., 367.

(2) *Bushell v. Bushell*, 1 Sch. and L., 90, 100; *Latouche v. Lord Dunsany*, 1 Sch. and L., 137; *Gardiner v. Blessington*, 1 Ir. Ch. 64; *Murphy v. Leader*, 4 Ir. L. R., 139.

(3) *Crosby v. Wadsworth*, 6 East., 610; *Griffiths v. Puleston*, 13 M. and W., 358; *Scorell v. Boxall et al.*, 1 Y and J., 396; *Petch v. Tutin*, 15 M. and W., 116.

(4) *Ellis v. Grubb*, 3, O. S., 611.

(5) *Ferguson v. Hill et al.*, 11, U. C. R., 530.

Semble, that this applies only to the registration of the first conveyance or devise of such timber; and that in consequence of the execution of the first conveyance, the timber conveyed thereby becomes virtually severed from the freehold, and is thenceforth a chattel in contemplation of law; subsequent transfers thereof, therefore need not be registered in order to maintain priority (1).

But this is applicable to the registration of the first conveyance only.

If the owner of the soil grant all his trees, they are thereby severed from the inheritance, and so become personalty (2).

Grant operates as a severance.

Semble, that standing timber is within the provisions of the Registry Law; and that the purchaser of a right to cut the same is affected with notice of the conveyance from the original owner, and a mortgage back from his vendor (3). But should the purchaser of the timber subsequently purchase the land, upon which such timber is standing, the chattel interest in the trees will become merged in the freehold, so that any future transfer of such timber must be in writing and registered (4).

Purchaser of timber affected with notice.

The sale of the annual production of the soil, which would pass to the executors, and not to the heirs, is not a sale of an interest in land, but of chattels; and is therefore not within the Act.

Sale of annual production not within Registry Act.

An assignment of a legacy, charged upon land, has been held in England not to be a deed affecting land, but an assignment of money only, and therefore not within the Registry Act (5). This point was afterwards raised in an Irish case

Assignment of Legacy.

(1) *Ellis v. Grubb*, 3 O.S., p. 613. See *Williams v. Williams*, 708.

(2) *McMillan vs. Miller*, 7, U. C. R., 544, per *Edmondson C. J.*

(3) *McLean v. Burton*, 24 Gr., 134; following *Ellis v. Grubb*, supra, and *Ferguson v. Hill et al.* supra.

(4) Co. 63, b.

(5) *Malcolm v. Charlesworth*, Keen. 63, in re *Wilkinson v. Charlesworth*, 5 L. J. (N. S.), Chy. 172.

but not decided (1). The ruling in *Malcolm vs. Charlesworth* appears to be a strained construction of the Statute, and has been doubted. In fact, in Ireland this decision has never been relied upon in practice (2). Such an instrument is plainly within our Act and would therefore require registration as "an instrument affecting land."

Agreement to assign leasehold interest.

An agreement to assign a leasehold interest in an estate, as security for a loan, has been held not to require registration (3), upon the ground that the English Act did not apply to the case of an equitable mortgage (4). These decisions have however been overruled (5).

Order for payment of money out of rents.

An order for the payment of money out of rents by a receiver thereof, to a devisee of the real estate, has been held to amount to an interest in land, within the Registry Act, as a part of the devisee's estate in the lands, and not a separate interest (6).

'Will.'

(3.) "Will" shall include probate of will and exemplification, or notarial copies of probate of will and letters of administration with the will annexed, and any devise whereby lands are disposed of or affected.

It also includes all testamentary instruments of which probate may be granted.

Proceedings to obtain probate, letters of administration with the will annexed and exemplifications thereof are governed by "The Surrogate Courts Act" (8), and the rules promulgated thereunder. Notarial copies are used when the will is deposited in a foreign country. The method to be

(1) In re Jennings, 8 Ir. Ch. Rep., 220.

(2) Davidson, Convey'g, Vol. 2, p. 770.

(3) Wright v. Stanfield, 5 Jur., N. S. 4, 27 Beav., 8; 28 L. J., Chy., 183.

(4) Sumpter v. Cooper, 2 Barn. & Ald., 223.

(5) Moore v. Culverhouse, 27 Beav., 400.

(6) Rochard v. Fulton, 1 J. and L., 483; 7 Ir. Eq., 131.

(7) R. S. Ont., cap. 46, sec. 2, sub. sec. 1.

(8) R. S., Ont., cap. 46, sec. 2, et. seq.

observed in registering wills and other testamentary instruments is pointed out in section 63 *post*.

(4.) "County" shall include a Union of Counties, a City, "County," Junior County and any part of a County or Counties set apart for judicial or registration purposes. 31 V. c. 29, ss. 1 and 33; 36 V., c. 17, s. 11; 36 V., c. 46, s. 235; 40 V. Sched. A. (124).

The word "County" shall include two or more Counties united for purposes to which the enactment relates (1). There is evidently a misprint in the numbering of the section cited from 36 Vic., c. 48 in the reference *thereto*. It should be s. 33.

(1) R. S. (Ont.) c. 1, sec. 9, s.s. 12.

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CHAPTER II.

REGISTRY OFFICES.

§3. In and for what places there shall be Registry Offices.

§4. Registry Offices may be removed.

§5. County Councils to provide fire proof offices and vaults.

In and for
what
places
there shall
be
Registry
Offices.

3. There shall be a separate Registry Office in every Riding, County, Union of Counties and City in Ontario wherein at present a separate Registry Office is established; and whenever any County is separated for judicial purposes from a union of Counties, or a new County is formed and set apart for judicial purposes, there shall be a separate Registry Office established therein, by the Lieutenant-Governor in Council, which office shall be kept in the County Town in like manner as in other County Towns, 31 V. c. 20, s. 3.

Impera-
tive.

The language of this section is imperative, and requires the establishment of a separate Registry Office in every County, separated for judicial purposes from a union of Counties, and in any new County which is established and set apart for judicial purposes.

Establish-
ment of
offices
under the
Registry
Act of
1795.

Under the Registry Act of 1795 it was optional to establish Registry Offices in those Counties which were not then provided with Registry Offices (1). No particular locality was designated where the Registry Office should be kept; the Governor-General, Lieutenant-Governor or Administrator of the Government having the power of selection. The option of establishing offices in new Counties was taken away by the Registry Act of 1846 (2), which required an office to be established and kept in every County then in existence and afterwards to be formed. No change was made by that Act, however, in regard to a fixed site for such office, the locality being named by the Governor, in the Commission appointing the Registrar, or altered

Under
Registry
Act of
1846.

(1) see 1.

(2) " 3.

by proclamation. It was subsequently enacted (1) ^{Under 16} that each County, returning a member of the ^{Vic. c. 187.} Legislative Assembly, was to be entitled to a separate Registry Office. It being found advantageous to establish offices in Cities, Junior Counties and Ridings of Counties, not set apart for Judicial or Municipal purposes, the Governor by proclamation was subsequently empowered (2) to establish ^{Under 22} such Registry Offices; and, in the case of a Junior ^{Vic. c. 95.} County or Riding of a County, to name some place where the office should be held until the dissolution of such union, or erection of such Riding into a separate County, and the establishment of a County Town, when such Registry Office was to be removed to, and kept in, such County Town. By a statute passed in the same Session, (3), it was enacted ^{Under 22} that, upon the separation of Counties, the office for ^{Vic. c. 99.} the registry of deeds for the Junior County should be kept in the County Town in like manner as in other Counties. Subsequently, the Lieutenant-Governor in Council was empowered to establish ^{Under 34} new divisions for Registry Offices (4), but this ^{Vic. c. 25.} power was taken away in the following year (5). ^{Under 35} ^{Vic. c. 28.}

4. Wherever in any County or Riding the Registry Office appears to the Lieutenant-Governor in Council to be inconveniently situated, he may by proclamation order the same to be removed to any other place in the County or Riding. 34 V. c. ed. 15, s. 1; 35 V. c. 28, s. 1.

There was no express power of removal of office ^{Removal} contained in the Registry Act of 1795, although ^{of office} such power was implied; but a provision similar to ^{cannot} this section was contained in section 30 of the ^{affect} Registry Act of 1846. Should proclamation be ^{Registrar's} made, ordering the removal of the office from the ^{Commission.}

(1) 16 Vic. c. 187, s. 4.

(2) 22 Vic. c. 95, s. 1.

(3) 22 Vic. c. 99, s. 59.

(4) 34 Vic. c. 25, s. 1.

(5) 35 Vic. c. 28.

place designated in the Registrar's Commission to some other locality within the limits of the same County, the provisions contained in the twentieth section of this Act, requiring the Registrar to reside within ten miles of his office, and to keep his office at the place named in his commission, are not irrevocable (1).

County Councils
to provide
fire-proof
offices and
vaults.

5. For the safe-keeping and protection of all books, memorials, duplicates, and other instruments of whatever description, and plans, belonging to the office of Registrar, the Council of each County where, when this Act takes effect, or at any time thereafter, there are no safe and proper fire-proof offices and vaults provided by such Council, or where thereafter any Registry Office is established, shall provide, furnish and maintain, and keep in good repair, a safe and fire-proof registry office, fire-proof vaulted, upon a plan and on a site to be approved of by the Lieutenant-Governor in Council, and shall thereafter keep the same furnished with fuel and furniture and in good repair, and Towns separated from Counties for municipal purposes, and Cities in which no separate Registry Offices exist, shall bear a rateable proportion of the expense thereof, based on the assessment of all the Municipalities within the jurisdiction of such County. 31 V. c. 20, s. 5.

This provision was designed for the protection of those whose muniments of title are deposited or recorded in the books and papers kept in the Registry Office. Prior to the Registry Act of 1846 the expense of providing offices, etc., was borne by the Registrar (2).

Formerly
duty of
District
Councils.

Subsequently this duty was imposed upon District Councils, under s. 19 of the Registry Act of 1846, which provided, that within eighteen months after the passing of the Act (1) safe and proper fire-proof offices and vaults should be provided in each County, for the keeping of books and instruments, such selection to be made by the Registrar; and upon his neglect to do so within that period, the selection of a convenient site was left to the

(1) *Fraser v. Municipality of Stormont*, 10 U. C. R. 286, per Robinson, C. J.

(2) *Ward v. Corporation U. C. of Northumberland and Durham*, 12 U. C. P. per Robinson, C. J. at p. 56.

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District Council, who were required to erect thereon a suitable office, not exceeding in value two hundred and fifty pounds, and to remove the Registry Office to that place. The powers thus conferred upon, and the obligations thus attaching to, District Councils, were subsequently, by statute, declared to be vested in, and incumbent upon, County Councils (1).

Obligatio
transfer-
red to
County
Councils.

The defendants having neglected to provide offices, as required by the Registry Act of 1846, a mandamus to compel them to do so was granted (2).

Neglect to
provide
offices.

That section was superseded by s. 8 C. S. U. C. cap. 89. The limitation as to cost of erection of offices and vaults was afterwards increased to \$1,500 (3). It was finally repealed on the passage of the Registry Act of 1865, the sixth section of which requires the erection of such office and vaults upon a plan and site to be approved of by the Governor in Council. The County Councils were furthermore required to furnish and maintain such office and keep same in good repair. This section was re-enacted with some slight addition in the sixth section of the Registry Act of 1868, upon which the present section is based.

Cost of
erection.

Neglect on the part of the Council to perform the obligations devolving upon them under this section, does not render them liable for the rent of another building, occupied by the Registrar as a Registry Office; the proper remedy in such case is to apply for a mandamus to compel them to carry out the requirements of the section.

County
Council
not liable
for rent in
default.

The defendants, being a County Council, and chargeable with the duty of erecting offices for the

- (1) 12 Vic. c. 81.
- (2) Reg. v Corporation U. C. Northumberland and Durham, 10 U. C. P. 526.
- (3) 24 Vic. c. 42.

Registrar, neglected to do so; the plaintiff, the Registrar of the County, having furnished the necessary vaults and offices, sued the defendants for the rent of the same. A verdict was entered for the plaintiff, with leave reserved to the defendants to move to enter nonsuit. The rule, having been obtained, was made absolute; on the ground that there was no provision contained in the Statute entitling the plaintiff to provide the offices, or obliging the defendants to pay rent, and that the plaintiff's remedy was to obtain the aid of the Court, in the shape of a Writ of Mandamus, to compel the defendants to perform the statutory obligation devolving on them (1).

(1) Ward v. Corporation U. C. of Northumberland and Durham
12 U. C. P. 54.

CHAPTER III.

Registrars.

- §6. Registrars.
- §7. Registrars, how appointed, &c.
- §8. Amount of Security to be given.
- §9. Security to be given by Registrars.
- §10. New Recognizances may be required by Inspector.
- §11. Copies may be obtained by any person.
- §12. Sections 15-20 of Rev. Stat. c. 15 to apply to securities.
- §13. Lieutenant-Governor may require Registrars to give security.
- §14. Sureties of Registrars.
- §15. Liability of Registrars and their sureties.
- §16. Registrar's Oath of Office.
- §17. Appointment of Deputies.
 - (a) Removal.
 - (b) Power of Deputy in case of death or removal of Registrar.
- §18. Deputy's Oath of Office.
- §19. Registrars or Deputies, &c., not to act as agents for persons taking securities on real estate, or advise as to titles, &c., in their counties.

6. Every Registry Office shall be kept by an officer to be Registrars, called the Registrar. 31 V. c. 20, s. 6.

The word "Registrar" includes Deputies (1). Includes Deputies.
Under the Interpretation Act directions to a Public officer or functionary in his official capacity, or otherwise applying to him by his name of office, include his successors in office, and his or their lawful deputy (2).

A Registrar is a public officer, and as such, can Is a public officer.
lay claim to the privileges attaching to that position.

Registrars are consequently entitled to the pro-Entitled
tection afforded to Justices of the Peace and other to the pro-
public functionaries by the Rev. Stat. (Ont.) cap. the Rev.
73, in regard to actions brought against them for cap. 73.

(1) Rev. Stat. (Ont.) cap. 1, s. 8, ss. 21.
(2) *Ib.*, s 8, ss. 26.

acts done, or omitted to be performed by them, under the provisions of that Statute, and the decisions thereunder are therefore applicable. The subject of legal proceedings against Registrars is considered in the notes to sections 15 and 21 *post*, to which the reader is referred.

The defendant, being Registrar, in giving his certificate to the plaintiff, omitted to mention a mortgage registered prior to a mortgage which plaintiff purchased on the faith of the certificate. An action having been brought against the defendant, it was held, that he was an officer within the meaning of Con. Stat. U. C. cap. 126, (now Rev. Stat. (Que.) c. 73), but that, under the circumstances, he was not entitled to notice of action, this not being an act committed, but a negligent omission (1).

Quo warranto lies for the office.

An information for *quo warranto* lies at common law for the office of Registrar (2). *Semble*, that an action for the fees is the proper remedy of trying the right to the office (3).

Registrars, how appointed &c.

7. The Lieutenant-Governor shall, as occasion may require, from time to time, by commission, under the Great Seal of the Province, appoint a fit person to the office of Registrar, and shall in like manner, fill up any vacancy occurring by the death, resignation, removal or forfeiture of office, by any Registrar, and every Registrar heretofore appointed or hereafter to be appointed shall hold office during pleasure only. 31 V. c. 20, s. 7.

Formerly appointed by commission.

Under the first Registry Act (4) the Governor was empowered to make the appointment. This authority was revoked by the Registry Act of 1846 sec. 3, which enacted that the appointments should be made by commission under the Great Seal of the Province. In such commission it was expressed to be "during pleasure," although no mention of

(1) *Harrison v. Brega*, 20 U. C. R. 324.

(2) *Rex. v. Hall*, 1 B. & C. 237.

(3) *Staniland v. Hopkins*, 9 M. & W. 178.

(4) Registry Act of 1795, s. 1.

the nature of such tenure was made in the Act itself.

The plaintiff was appointed Registrar in 1859, Registrar (the Registry Act of 1846 being then in force) by a commission conferring upon him the office of Registrar, with all the rights thereto appertaining. The appointment was expressed to be "during pleasure." In 1864, he was removed from office, and the defendant appointed in his stead, the admitted cause leading to the removal from office, being the alleged misconduct of the plaintiff, while acting in the position of Returning Officer at a Parliamentary election. It was held, that under the Statute then in force, the plaintiff was subject to removal only for the reasons particularized in that Statute, such as incapacity, undue or fraudulent practices, etc., etc., in the performance of his duties thereunder as Registrar; that he could only be removed by the means therein provided for that purpose; and that the words "during pleasure" in his commission, would not deprive him of his statutory rights and privileges. It was further held that the ninth section of the Registry Act of 1865, which was passed after the defendant's appointment to the office formerly held by the plaintiff, and provided for the continuance in office of every Registrar in office at the date of the passage of such Act (1), would not have the effect of confirming any such appointment, if illegal; and that the Interpretation Act, providing that a power to appoint should include a power to remove, was not applicable to such a case. The plaintiff was upon these grounds held to be *de facto* Registrar, and as such entitled to the fees

could not be removed under Registry Act of 1846 except for cause specified by that Act.

Held that 9th sec. of Registry Act of 1865 did not confirm any illegal appointment

appertaining to the office, which fees had been received by the defendant (1).

Remarks
of Draper,
C. J.

Reading this section in connection with section 21 *post*, it would appear from the case just alluded to, that the causes, for which alone a Registrar could be removed from office, are specified in the latter section. Draper, C. J., in his judgment said:—"Assuming, as I think is shewn, that the language of the Registry Act makes the appointment *quam diu se bene gesserit*, it would be clearly inconsistent with the context to hold that the Governor had a general and unlimited power to remove a Registrar, because the power of removal is in express terms given by the statute, but given with a limitation as to the causes for which it may be exercised, and subject to the establishment of the matter of fact in a particular mode. If the power of removal were in this case to be treated as annexed to the power of appointment, and not as conferred by the Registry Act, the special provisions would be superfluous, and the officers would lose the protection, which they were obviously designed to give him. He might be removed *ex mero motu* without cause assigned at all."

Reversed
on appeal.

The ruling in this case was, however, reversed, upon appeal to the Court of Error and Appeal, which held that the office was one to which, at Common Law, the appointment might be "during pleasure," and the nature of the tenure not being expressly designated in the Statute, which was in fact, silent on the point, the plaintiff held office simply "during pleasure," and therefore that his removal from such office was regular and valid. It was also held, that had the office been one of free-

Office
being held
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(1) *Hammond v. McLay*, 26 U. C. R., 434.

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hold, the grant of it to hold "during pleasure" would have been void, and that the plaintiff would, in such a case never have been legally appointed (1).

To obviate further difficulty on this point, and to prevent a like occurrence such as the facts of those cases present, it was provided, on the passage of the Registry Act of 1868 (2), sec. 7, that every Registrar theretofore appointed, or thereafter to be appointed, should hold office during pleasure only.

A similar provision, applicable to all officers then appointed, or hereafter to be appointed, by the Lieutenant Governor, whether by commission or otherwise, is contained in the Interpretation Act (3).

8. The Lieutenant-Governor may from time to time, by Order in Council fix and determine the amount of the security to be given, as hereinafter mentioned, by each Registrar; but the amount of such security shall be not less than four thousand dollars, nor more than ten thousand dollars. 36 V., c. 6, s. 3. 31 V., c. 20, Form A.

Originally the amount of the security required to be furnished by Registrars, for the due fulfilment of the duties appertaining to their office, was fixed at the sum of four thousand dollars (4). This amount remained unchanged in the subsequent legislative enactments bearing upon the subject until the Registry Act of 1865 was passed when the principle of having a fixed amount was abandoned and, in lieu thereof, the Lieutenant-Governor was empowered to determine by Order in Council, the amount of security, (within the limits mentioned in section 8), which each individual Registrar should be called upon to furnish.

Originally
fixed at
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by Lt.-Gov-
ernor in
Council.

(1) *Hammond v. McLay*, 28 U. C. R., 463.

(2) Assented to 4th March, 1868.

(3) Rev. Stat. (Ont.) c. 1, s. 8, ss. 27.

(4) Registry Act of 1795, sec. 6.

Causes for
alteration.

The reason for this alteration can be traced in the large increase of business transacted in Registry Offices of late years, as compared with that in the earlier history of registration. The security furnished by the Registrar being a fund to which an aggrieved person can look, in order to reimburse himself for damages incurred through the negligence or misconduct on the part of the Registrar, must necessarily be increased in proportion to the probable increase in number of those transacting business with Registrars.

The character of the security is shewn in the form Schedule A.

Security
to be given
by Regis-
trars.

9. Subject to the provisions of the twenty-fourth section of *The Act respecting Public Officers*, before any Registrar is sworn into office, such Registrar shall execute and enter into a joint and several covenant in duplicate with two or more sufficient sureties to be approved by the Lieutenant-Governor in Council for such amount as may be fixed and determined by Order in Council in that behalf as aforesaid.

See Rev.
Stat. 15,
s. 24.

2. Such duplicate covenant may be in the form of Schedule A to this Act, or to the like effect; and to each of such covenants shall be attached an affidavit in the form of Schedule B to this Act, or to the like effect, made by each of the sureties therein mentioned.

3. One of such duplicate covenants with the affidavits appended shall be forthwith transmitted to the Provincial Secretary, to be by him retained, and the other duplicate covenant, with the affidavits aforesaid, shall be by such Registrar forthwith filed in the office of the Clerk of the Peace for the said County or Union of Counties, where the same shall remain of record. 39 V., c. 6, s. 3; 39 V., c. 17, s. 7; 40 V., c. 7, *Sched. A.* (125.)

The section referred to above is as follows :

Certain
public
officers
may give
security of
guarantee
companies

24. Whenever a Sheriff, Registrar, Division Court Clerk or Bailiff, or any other public officer, is required to give security for the performance of his duties, or other security of a like nature, and whether such security enures for the benefit of the Crown, or of any person injured by the default or misconduct of such officer, the Lieutenant-Governor in Council may, by order in Council, direct that the bond or policy of guarantee of any incor-

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porated or joint stock company empowered to grant guarantees, bonds, covenants or policies for the integrity and faithful accounting of public officers, or other like purposes, and named by such Order in Council, may be accepted as such security, upon such terms as may be determined by the Lieutenant-Governor in Council; and the provisions of law with reference to the legal effect of such securities when given by individuals, to the filing thereof, and to the mode of proceeding thereon, shall apply to the security given by every such company.

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to a joint
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in Council
by Order in

2. The interim receipt of such Company may be accepted in lieu of the formal security, but the formal security shall be completed within one month. 32 V. c. 29, s. 16; 36 V. c. 6, s. 4; 38 V. c. 22, s. 1; 40 V. c. 7. Sched. A. (11).

Schedule A
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n of record.
l. A. (125.)

Formerly the Registrar was required, before being sworn into office, to enter into a recognizance in the penalty of one thousand pounds, with two or more sufficient sureties, to be approved of by five or more Justices of the Peace of the County: which recognizance had to be registered at the next General Quarter Sessions of the Peace and transmitted by the same Justices within six months after the date thereof to the Queen's Bench (1). Under

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The number of magistrates was subsequently reduced to three, the registration of the recognizance at the General Quarter Sessions dispensed with, but the Justices were still required to forward the same within six months to the Queen's Bench as before (2). By the Registry Act of 1865 (3) the Registrar was required to enter, with two or more

Former mode of entering into recognizance under Registry Act of 1795

Under Registry Act of 1846

Under Registry Act of 1865.

- (1) Registry Act of 1795, s. 6.
- (2) Registry Act of 1846, s. 26.
- (3) s. 10.

sufficient sureties into a joint and several recognizance, in a penal sum to be fixed as above between four thousand and ten thousand dollars and also to enter into a joint and several covenant in duplicate with the same or other sureties, to the same substance and effect as that in Schedule A, but the recognizance and one of such duplicates with affidavits annexed were required to be forthwith transmitted to the Provincial Secretary, the other duplicate covenant being filed by the Registrar in the office of the Clerk of the Peace of the County or union of Counties.

A similar provision was contained in the Registry Act of 1868 (1), afterwards slightly amended (2).

It will be sufficient if the covenant substantially complies with the form in Schedule A. (3).

Quere, if the Registrar were to act in his official capacity as such, after the execution of the covenant and before approval, would such Acts be valid (4)?

Should the bond referred to in R. S. Ont., cap. 15, s. 24 be furnished in addition to the covenant?

The absence of any specific reference to a recognizance or bond, in addition to the covenant mentioned in this section, coupled with the reference to the twenty-fourth section of the Act respecting Public Officers, renders it doubtful whether the bond referred to in the latter section be in addition to the covenant, or should be substituted therefor by order in Council, the covenant being a "security for the performance of his duties" within the meaning of section twenty-four, especially as there is nothing said as to the disposition of such bond when executed, as was

(1) S. 9.

(2) 36 Vic., c. 6, s. 3.

(3) Eggington v. Litchfield, 5 E. & B. 200.

(4) See Parker vs. Kett, Lord Raymond 601. 2 Ins., 381.

formerly required of the recognizance. It is submitted that it will still be requisite for those, that hereafter be appointed to the office of Registrar, to furnish, either a bond with sureties to Her Majesty, or the security of a Guarantee Company, besides the covenant above referred to. To remove doubt, however, it would be well if the Legislature were to add a clause expressly providing for the furnishing of such bond or Company's security. In anticipation of such amendment, and in case it should be considered that a bond or Company guarantee is still necessary, a form of bond is contained in Appendix B.

By 36 Vic. c. 6, s. 2, if a Registrar became unable to make the necessary affidavits of justification under the circumstances set forth in the first section of that Statute, such failure on his part would not necessarily work dismissal from office; but he was required to furnish additional security. In the Revision of the Statutes this clause has been expunged. On reference to Appendix B, annexed to the Revised Statutes, it is stated that the section was repealed by 40 Vic. c. 7, ss. 125-131; but on reference to this Act, no mention is made of same.

10. The Registrar, whether appointed before or after the passing of this Act, may at any time be required by the Inspector of Registry Offices, with the approval of the Lieutenant-Governor in Council, to execute new recognizances in the form and to the effect hereinbefore provided, or to furnish other sureties as may be deemed expedient, or both, and in default thereof shall be subject to the penalties mentioned in section twenty-one of this Act. 31 Vic. c. 20, s. 10.

A salutary and essential requirement. The default or neglect on the part of the Registrar to comply with the requisition of the Inspector in this respect, will render him amenable to the penalties referred to in section 21 *post*. It is submitted

that it is equally incumbent upon the Registrar, in the absence of any express requisition on the part of the Inspector, to execute fresh covenants or to provide other or further sureties; that he should notify the Provincial Secretary or Provincial Registrar, or the Inspector of Registry Offices of the death, bankruptcy, insolvency, or non residence in this Province, of any surety or person bound jointly with him in any security; and that the omission by the Registrar to provide new approved security will render him liable to forfeiture of office, apart from the provisions of section 21 *post* (1).

Copies
may be
obtained
by any
person.

Sections
15, 20, of
Rev. Stat.,
c. 15, to
apply to
securities.

Lieuten-
ant
Governor
may remit
penalty in
certain
cases;

Or may
extend
time for
giving
security,
&c.;

11. Any person may examine and obtain a copy of the Registrar's covenant and affidavits on payment to the Clerk of the Peace of a fee for such copy and search of one dollar, or for such search, of 25 cents, V. c. 20, s. 11.

12. Sections fifteen to twenty inclusive of *The Act respecting Public Officers*, shall apply to securities given by Registrars, 30 V. c 17, s. 4. [See also sections 24-27 of Rev. Stat. c. 15].

The sections referred to are as follows:

15. The Lieutenant-Governor in Council may remit the forfeiture or penalty in any case in which the failure to give security, or to register and deposit any bond or security under this Act, has not arisen from any wilful neglect of the person bound to give, register or deposit the same.

(2.) If it appears to the Lieutenant-Governor that the period hereinbefore limited for giving the security of a new surety as aforesaid is, in consequence of particular accidents, casualties or circumstances insufficient, or that by reason of the distance, or loss of letters, or illness, or the refusal of any surety to give the security, or of any surety not being deemed eligible and being rejected, or any other accident or casualty, further time will be necessary to enable the security of such new surety to be given, the Lieutenant-Governor in Council

(1) See Rev. Stat. Ont., c. 15, s. 13.

may allow such further period for giving the security of such new surety as appears to him reasonable and proper ;

(3.) But such extended period shall, in no case, exceed two months beyond the period allowed by this Act ; and the precise period proposed to be allowed, together with the special grounds for allowing the same, shall be entered in the book in which the original security has been registered, or endorsed on the back of the original bond or other security itself ; and the person required to give the security of such new surety shall not be subject to any forfeiture or penalty for not giving the same within the time limited by this Act, if he gives it within the extended period so allowed as aforesaid.
32 V. c. 29, s. 8.

16. The Lieutenant-Governor may approve of the security given by any public officer, or the affidavit of justification made by his sureties and filed by him, although the same has been given or filed after the time limited by this Act ; and in such case, the office or commission of such public officer shall be deemed not to have been avoided by such default, but to have remained and to remain in full force and effect. 32 V. c. 29, s. 9. See 40 V. c. 7, *Sched. A.* (10).

17. No act of any public officer of this Province whose security has been given, or registered, or deposited, or the affidavits of justification of whose sureties has been filed after the time limited by this Act, shall, by such default, be void or voidable.
32 V. c. 29, s. 10. See 40 V. c. 7, *Sched. A.* (10).

18. Where the securities of the principal and sureties have been executed at different times, (whether they were taken in one and the same bond, deed, or other instrument, or in different ones)

but not more than two months, and an entry thereof must be made.

Security may be approved although given after time limited.

Acts not void by delay in giving security, &c.

Securities executed at different times, within what time

the period limited for registering and depositing such securities shall be estimated from the time of execution thereof by the person who was the last to execute the bond, deed, or other instrument, or the last bond, deed or other instrument, as the case may be. 32 V. c. 29, s. 11.

Neglect, &c., not to vacate bond or discharge surety. 19. No neglect, omission or irregularity in giving or receiving the bonds or other securities, or in registering the same, within the periods, or in the manner prescribed by this Act, shall vacate or make void any such bond or security, or discharge any surety from the obligations thereof. 32 V. c. 29, s. 12.

Proper officer to register and deposit bonds, although time expired, but not to exempt from penalty. 20. All bonds or other securities hereby required to be registered and deposited shall be registered and deposited by the proper officer, notwithstanding the period prescribed for registering and depositing the same has expired; but no such registering and depositing of any such bond or other security shall be deemed to waive any forfeiture or penalty, or shall exempt the person on whose behalf the same are registered and deposited, from any forfeiture or penalty, under any of the provisions of this Act. 32 V. c. 29, s. 13.

24. See page 30 *ante*.

Securities by Sheriffs, Registrars, Division Court Clerks and Bailiffs, and suits thereon by the Crown. 25. Every covenant hereafter entered into for or in behalf of a Sheriff, Registrar, Division Court Clerk or Bailiff aforesaid, in pursuance of any Statute requiring security from any of such officers, or in pursuance of the preceding section, shall enure for the benefit of Her Majesty; and Her Majesty may bring and maintain an action thereon in respect of any damages suffered by Her Majesty, or by the public on account of any misconduct, neglect, or default of the officer in either instance,

with the like effect as any private person suffering damages as aforesaid might, and may also sue in any other mode by which Her Majesty may sue upon a covenant. 39 V. c. 17, s. 7.

26. Wherever by any Act of the Legislature of this Province, any person appointed to any public office, or authorized to perform any official duties, is required to give or enter into any bond or other security for the proper performance of his duties, any affidavit of qualification or justification required to be made by such person or by the sureties in any such bond, and any affidavit of the due execution of any such bond or security, may be made before a Justice of the Peace, or before a Commissioner authorized to take affidavits to be used in the Superior Courts. 39 V. c. 17, s. 6. *See* 27-8 V. c. 28, s. 50; 39 V. c. 14, s. 13; *and* 40 V. c. 7, *Sched. A.* (10).

27. Where any person, company or corporation is surety for the performance by a Sheriff, Registrar of Deeds, or Clerk or Bailiff of a Division Court, or by any other public officer, or by any person appointed to any civil office, employment or commission in any public department in the Government of this Province, or to any office or employment of public trust, whether the suretyship is for the benefit of the Crown or enures for the benefit of any person injured by the default or misconduct of such officer or other person, and any action or suit is brought upon the bond, covenant or recognizance of suretyship, no damages shall be recovered in the said action or suit against such surety except as to matters and causes of action which have arisen within ten years next before the commencement of the said action or suit. 39 V. c. 17, s. 1.

Lieuten- 13. The Lieutenant-Governor, upon the application of any
ant Gover- County or City interested, or without such application, if he
nor may thinks fit, may require any Registrar to give security in such
require form and for such an amount as the Lieutenant-Governor in
Registrars Council determines to be sufficient to secure the due payment of
to give any moneys payable by the Registrar to the County or City. 39
security. V. c. 17, s. 10.

The incomes and emoluments received by Registrars of late years in some offices having considerably increased, owing to the increase in office business, and it being anticipated that, as the country developed, transactions affecting real estate would become more numerous, business in the Registry Offices would in consequence become augmented and the fees attaching thereto increasing in proportion would become excessive, it was thought proper to appropriate to the use of the County or City for which, or for a Riding of which, he is Registrar, a percentage of the fees received by the Registrar, over and above a certain amount thereof to be retained by him for his personal use; thus allowing the various municipalities to benefit by the increased activity in real estate transactions within their respective limits. With this view an Act was passed in 1872 (1) which, after reciting that the number of registrations, extracts and searches had become so large in some Registry Offices that the income arising therefrom was excessive, and that the like result might be anticipated in other Registry offices, enacted that when the fees of office exceeded certain amounts, the surplus should belong to the County or City in which such office was established. The provisions of that Statute are contained in sections 98-105 of the present Act. As it was only reasonable that the Counties and Cities entitled to such surplus should be properly secured in that behalf, provision to that

(1) 35 Vic., c. 27.

effect was subsequently made (1) in the terms of the present Act.

14. Any surety for a Registrar who is no longer disposed to continue his responsibility as such surety, may give notice thereof to the Registrar and to the Provincial Secretary, and in such case the Registrar shall, under penalty of forfeiture of his office, furnish the security of a new surety in lieu of the surety so giving notice, and shall complete and transmit the necessary covenant in that behalf to the Provincial Secretary within one month after such notice, and shall procure the approval of the new security within two months after the notice.

2. All accruing responsibility on the part of the person giving the notice shall continue until, and shall cease upon the perfecting and approval of the new security. 39 V., c. 17, s. 2.

As stated by the sub-section, until new security is perfected and approved, the liability of the person desiring to discontinue his responsibility as surety is retained and unaffected. The permission here accorded to a surety, desirous of retiring, is similar to that extended to those who are sureties to the Crown for the due accounting of public moneys, or for the proper performance of any further duty devolving upon their principal (2). This section will also enable a person appointed to the office of Registrar to perfect his security with more facility than before its adoption. The "one month," referred to in the section, will not commence running until the day succeeding the day on which notice shall have been given to the Provincial Secretary (3). Should the Registrar neglect to furnish fresh security, it is apprehended that, in addition to the penalty of forfeiture of office, he would be liable to an action on the case at the suit of the surety desirous of being relieved, should the continuation of the liability of the surety under the sub-section result in any loss to the latter. *Quere*. Whether in such a case he would come within the

This permission to the surety is similar to that included under R.S. Ont., s. 15, c. 14.

When the "one month" commences to run.

Neglect of Registrar to furnish fresh security.

(1) 37 Vic., c. 17, s. 10.

(2) See Rev. Stat. (Ont.), c. 15, s. 14.

(3) *Young v. Higgins*, C. M. and R., 49; *Weeks v. Wray*, L. R., 3, 3 Q.B., 212.

definition of "any person injured thereby" referred to in section 21 *post*, so as to enable him to recover against the Registrar or his co-surety upon the covenant?

For form of notice by a surety desirous of terminating his responsibility, see Appendix B.

Liability
of Regis-
trars and
their sure-
ties.

15. The Registrar and his sureties shall be jointly and severally liable on their covenant to any aggrieved person or persons to indemnify him or them against any damage or loss sustained by him or them, by or through the neglect or misconduct of the Registrar or his Deputy in the performance of the duties of his office, not exceeding the penalty named therein, but this provision shall not exempt the Registrar from any further responsibility to persons sustaining damage or loss as aforesaid. 31 V. c. 20, s. 12.

Liability
at Com.
Law.

Independently of any statutory enactments, public officers are, at Common Law, liable in damages to any one specially injured by their omission to perform, or their negligent performance of, duties devolving upon them (1). They are also liable for the default or neglect of their deputies or lieutenants in the ordinary course of their business. A Deputy is not responsible to any one but his chief.

Nature of
the duty
affects the
liability.

The liability of a Public Officer to an individual for his negligent act or omission in the discharge of an official duty depends altogether upon the nature of the duty as to which the neglect is alleged. Where his duty is absolute, certain and imperative, contemplating the execution of a set task—is simply ministerial—he is liable in damages to any one specially injured either by his omitting to perform the task or by performing it negligently or unskilfully. But where his powers are discretionary, he cannot be held liable for neglect, unless corruption or malice can be successfully imputed (2).

Where
minister-
ial,
or discre-
tionary.

Acts of
Public

The Courts have, in general, leaned against

- (1) *Irwin v. Grey*, L. R. 1 C. P. 171; 3 F. & F. 635.
(2) *Shear. and Red. on Neg.* §156.

construing statutes so as to make the validity of Officers' not regarded as affecting the validity of acts of individuals. the acts of individuals depend upon the due performance of their duties by Public Officers, especially in matters that such individuals cannot easily control or superintend.

This section in its application includes cases of loss arising from the neglect or misconduct, not only of the Registrar, but also of his Deputy, whereas section 21 *post* refers to the Registrar alone. The present section applies also only in cases where the Registrar or his Deputy are guilty of the negligence or misconduct in the performance of ordinary duties of office, and has no reference to any fraudulent practice, or high-handed abuses of office, which appear to be regulated by section 21.

Although the responsibility of the sureties is limited to the penalty named in the covenant, as settled by Order in Council, the liability of the Registrar to the party aggrieved continues to the extent of his means.

The covenant being joint and several is thus the joint covenant of all, and the several covenant of each, the consequence being, that the covenantors must either be all sued together, or each of them separately at the option of the plaintiff (1); he cannot join two of them. If the Registrar and one of the sureties, or if the two sureties alone, be sued upon the covenant, they must take the objection by plea in abatement to the action, that there is another joint obligor (2).

Registrars, being Public Officers, are entitled Registrar entitled to

(1) Per Buller, J., *Streatfield v. Halliday*, 3 T. R., 779, 782. See Dacey on Parties 11.

(2) *Shepherd's Touchstone* by Preston, p. 166, 180, 376, *Eccleston v. Clipsham*, 1 Wm. Saunders, 153; *Abbot v. Smith*, 2 Black Rep., 947; *Bullen & Leake Prec.* 3rd Ed., p. 471.

notice of
action.

under the provisions of "the Act to protect Justices of the Peace and other officers from vexatious actions" (1). They are therefore entitled to one month's notice of action, if an action be brought against them for anything done in the execution of their office.

General
rule as to
notice of
action.

The general rule on this point is, that a Public Officer is entitled to notice, when he acts within the authority conferred upon him by the statute. It is not limited to cases where the defendant acted strictly within the statute, as it obtains in cases where the defendant, in the execution of his office, acts in good faith. The *bona fides* of his conduct is a question for the jury (2). A Registrar is entitled to notice of an action brought against him to recover back fees charged by him in excess of those allowed by the statute (3).

Notice not
necessary
where the
act com-
plained of
is contrary
to statute.
Or one of
negligent
omission.
Refusal to
deliver
statement
of fees.

Where the act complained of is in direct contra-
vention to the statute, no notice is necessary (4)
and notice is not requisite where the act is one of
negligent omission, the Statute not extending to
cases of mere neglect or malfeasance (5).

Where a Registrar neglected and refused to
furnish a statement in detail of fees charged
by him, as required by section 94 *post*, an
action was brought against him for such neglect
and refusal, and a mandamus claimed. Upon
demurrer to some of the defendants pleas, it was
held that the defendant was not entitled to a
notice of action, as the neglect and refusal were
acts of omission (6).

(1) Rev. Stat. (Ont.) c. 73, see p. 25 *ante*.

(2) *Carwell v. Hoffman*, 1 U. C. R., 381.

(3) *Ross v. McLay*, 40 U. C. R., 87.

(4) *Neill v. McMillan*, 25 U. C. R., 485.

(5) *Harrison v. Brega*, 20 U. C. R., 324. See *Dorion v. Robertson*, 15 L. C. R. 459.

(6) *Ross v. McLay*, 40 U. C. R., 83.

A Registrar, being applied to by the plaintiff for a certificate of the registered entries upon a certain parcel of land, gave one in which he omitted to mention a certain mortgage for \$600, which was registered prior to the one which the plaintiff purchased; the latter assuming from the certificate that the mortgage purchased by him was the first and only encumbrance. The first mortgagee filed a bill and obtained a decree for sale. The plaintiff purchased the land at such sale for a less sum than would satisfy both mortgages, but he afterwards disposed of the land at a considerable advance, so that, ultimately, he would be in receipt of all that he had paid for his mortgage. An action having been brought by the plaintiff against the Registrar for this omission, the jury awarded the plaintiff \$500 damages. It was held that the damages were moderate; the plaintiff having, in fact, sustained loss to the full amount of the first mortgage (1). The plaintiff in this case, having also been made a party to a suit in Chancery upon the first mortgage, claimed priority, but failing in his defence, was compelled to pay costs. Whether these costs could have been recovered from the Registrar was a point raised, but not determined, as it was uncertain whether they were included in the verdict.

In a case decided in the Province of Quebec it has been held that a Registrar is responsible for damages or loss caused by his neglect to register a mortgage, or by a certificate given by him wherein an omission occurs, from the effect of which a purchaser *de bonne foi* is turned out of possession (2). The action in such a case must be one *en garantie*.

Omission to include an instrument in abstract of title.

Neglect to register an instrument.

Action one of *en garantie*.

(1) Harrison v. Brega, *supra*.

(2) Montizambert v. Talbot, 10 L. L. C. R. 269.

the Registrar being the *garant* of the party to whom he has directly caused damage (1).

Error in
Index
Book.

The Registrar is responsible in damages for loss occasioned by any error or omission in his Books of Office such as the Index (2), but he is responsible only to the party paying his fees, and his personal representatives. The liability of a Registrar upon a false or erroneous certificate extends only to the party taking the certificate, and does not entitle a subsequent purchaser to recover against him (3), unless he affirm its correctness to such subsequent purchaser (4).

Extent of
responsi-
bility.

Regis-
trar's oath
of office.

16. Every Registrar, before he enters upon the execution of his office shall, before two or more Justices of the Peace for the County, take the oath given in the form of Schedule C to this Act, which shall be transmitted to the Provincial Secretary together with the recognizance and covenant aforesaid. 31 V. c. 20, s. 13.

The form of this oath has varied but slightly from that contained in the first Registry Act.

Appoint-
ment of
Deputies.
Removal.
Power of
Deputy in
case of
death or
removal of
Registrar.
Right to
appoint
deputy.

17. The Registrar may nominate a Deputy or Deputies in his office, who may perform all the duties required under this Act, in the same manner and to the like effect as if done by the Registrar, such nomination shall be in writing, under the hand of the Registrar and sealed with his seal of office; and any Registrar may remove his Deputy and appoint another in his place whenever he thinks it necessary; and in case of the death, resignation, removal or forfeiture of office of the Registrar, the Deputy Registrar, or in case of there being more than one, the senior Deputy Registrar shall do and perform all and every act, matter and thing necessary for the due execution of the said office, until a new appointment of Registrar is made by the Lieutenant-Governor. 31 V. c. 20, s. 14.

The Registrar being a ministerial officer has the inherent right of appointing a deputy (5); that power does not attach to the holder of a judicial office.

(1) *Ib.*

(2) *Mut. Life Ins. Co. v. Drake*; 1 Abbott, (N. Y.) N. C. 321, per Smith, J.

(3) *Commonwealth of Penn. v. Harmer et al.*, cited U. C. L. J. (N. S.) Vol. 1, p. 135

(4) *Siewers v. Commonwealth* cited 1 Legal News (P.Q.) 499. See *Cooley on Torts*, 383.

(5) *Com. Dig. Officer D. 1.*

A deputy cannot make a deputy: that importing Deputy cannot appoint a Deputy. and assignment of his authority, which is not assignable (1).

Where the Registrar and his Deputy were jointly found guilty of a misdemeanour, an indictment against charging such misdemeanour jointly, was good (2).

A Deputy is liable to be indicted while the principal legally holds the office, and even after the Deputy himself has been dismissed from office (3).

Where, prior to the Registry Act of 1865 (4), a Deputy Registrar carried on business for many years as a conveyancer for his own benefit, but with the knowledge of the Registrar, and without any objection on the part of the latter, it was held that the Registrar could not afterwards claim the profits (5).

In this case the Deputy was said to have searched the title for the parties, and not to have given to the Registrar credit for the search, or made any charge for it to the parties. The Registrar not appearing to have been aware of this practice, the Deputy was held chargeable with the ordinary search fee, as the Registrar's share of the transaction. It was said that the Deputy had not charged other parties with all the fees which the law allowed; but the Court considered him not liable to the Registrar for these fees, where the omission to make the charge was not in view of any personal advantage to the Deputy himself. The Statute of Limitations was also held to be no bar to the claim of the Registrar in

(1) 1 Cal. Rep. 96.

(2) Reg. v. Benjamin, *et al.*, 4 U. C. P. 179.

(3) Reg. v. McLean cited *Ib.*, p. 188.

(4) s. 14.

(5) Smith v. Redford, 19 Gr. 274.

respect of these and other transactions between them (1).

A form of appointment of Deputy will be found in Appendix A.

Deputy's
oath of
office.

18. Every Deputy Registrar before he enters on the execution of his office, shall, before two or more Justices of the Peace for the County take the oath or an oath to the like effect, appointed to be taken by the Registrar, which shall be forthwith transmitted in like manner. 31 V. c. 20, s. 15.

For form of oath see Appendix A.

Registrars
or Deputies,
etc., not to act
as agents,
for persons
taking securities
on real estate,
or advise as
to titles,
etc., in
their
Counties.

Inconvenience of
former
system.

Change
effected by
the Registry
Act of
1865.

19. No Registrar or Deputy Registrar or Clerk in his office shall, directly or indirectly, act as the agent of any corporation, society, company, person or persons investing money and taking securities on real estate within his County, nor shall such Registrar or Deputy Registrar, or Clerk in the office advise, for fee or other reward, or otherwise, upon sales of land, or practice as a Conveyancer, within his County, nor shall he carry on or transact within the Registry Office any other business or occupation whatever, upon pain of forfeiture of office. 31 V. c. 20, s. 16.

The practice of Registrars, their Deputies and clerks in taking advantage of their position, as custodians of documents and other evidences of title relating to land, to carry on the business of conveyancers and land agents for their own private advantage and profit, was long felt to be not only an evil in itself, in having a tendency to interfere with the impartial discharge of the duties attaching to their offices, and to promote litigation, but also in the injustice which such practice worked towards the public generally, and more particularly to the legal profession and others engaged in the occupation of conveyancing. When the Registry Act of 1865 was before the Legislature it was determined to remedy this abuse, and a clause was introduced (2) by which Registrars and Deputy Registrars were prohibited from directly or indirectly acting as the agent of any corporation, society, company, person or persons investing

(1) *Ib.*

(2) See 14.

money and taking securities upon real estate within their respective Counties, and also from advising upon titles. The Registrars, their deputies and clerks were not, however, interdicted from acting as conveyancers, but were subjected to the same liabilities as Attorneys and Solicitors for neglect or unskilfulness in assuming that capacity.

The injunction against acting as agents and advising upon titles to land did not by that Act extend to the clerks in the Registrar's employment, and it being conceded that it was highly improper to permit conveyancing to be carried on by those connected with Registry offices, a further amendment of the law was contained in the sixteenth section of the Registry Act of 1868, which is identical with the section at present under remark.

It not unfrequently happens that a person, who is desirous of obtaining information as to the nature and position of the title to a parcel of land in which he is interested, will enquire of the Registrar, his deputy or clerk, if the title be correct, &c. In such a case, which is just one of those contemplated by this section, no information or opinion upon the subject can properly be furnished to him by any of these officials, as such information would, in fact, amount to an advice upon the title, and they are restrained from so doing by the express language of the section. Their duty in such cases is to decline to accede to the request of the party, and to refer him to this section in support of their refusal.

It is to be observed that the prohibition to Registrars transacting business other than that strictly connected with the Registry Office, extends only to transacting the same within the walls of his office; subject, therefore, to the exceptions

Did not
extend to
clerks in
Registry
Office.

Duty of
Registrars
under this
section.

enumerated in this section, he is at liberty to engage in other employments outside of his office, provided that the duties of his position are not affected thereby.

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CHAPTER IV.

DUTIES OF REGISTRARS.

- §20. Residence of Registrars.
- §21. Removal for misconduct. Liability of Registrar, and of Deputy executing office.
- §22. Hours of attendance at office. Holidays.
- §23. Registrars to make searches and abstracts, on certain conditions, to exhibit originals of instruments, to certify copies, etc.
- §24. Registrars to have a Seal of Office, and for what purposes. Not bound to produce any papers, except on order of a Judge.

20. Every Registrar shall reside within ten miles of his office, and shall keep his office at the place named in his commission, or otherwise as appointed by the Lieutenant-Governor in Council, or by any Act in force respecting the same. 31 V. c. 20. s. 17.

Under the Registry Act of 1795 (1) the place of residence was to be assigned in the appointment. This was alleged to be on the ground that, as the population of the country might not, at the date of the passage of the Act, admit of a separate Registrar to be appointed to every office, a Registrar might perform the duties appertaining to more than one office. By the Registry Act of 1846 (2) a Registrar was appointed for each County, and was required to keep his office at the place named in his commission, or at some other place as should be designated by proclamation; and that should he cease to reside within the limits of his County, he would become liable to removal from office (3).

- (1) Sec. 1.
- (2) Sec. 4.
- (3) Sec 20.

The section now under consideration was first enacted by the Registry Act of 1865 (1), and has not been altered since the passage of that statute.

This section must be read in connection with section 4 *ante*, authorizing the Lieutenant-Governor in Council, in case it appears that the Registry Office is inconveniently situated, to order, by proclamation the removal of the Registry Office to any other place within the County or Riding. If, upon such removal taking place, the locality to which such Registry office would be moved should be distant more than ten miles from the residence of the Registrar, he would be obliged to remove his residence to within that limit (2).

Removal
for mis-
conduct.

Liability
of Regis-
trar,
and of
Deputy
executing
office.

Penalty
under
Registry
Act of
1795.

21. If the Registrar in any manner misconducts himself in his office, or neglects to perform his duty in every respect, as required of him by this Act, or commits or suffers to be committed any undue or fraudulent practice in the execution thereof, then such Registrar may, at the discretion of the Lieutenant-Governor in Council, be dismissed, and he shall, moreover, together with his sureties, so far as their covenants extend, be liable to pay all damages, with full costs of suit, to any person injured thereby, to be recovered by action in any of Her Majesty's Superior Courts of Record; and any Deputy executing the office of Registrar during any vacancy by death, resignation or forfeiture of the Registrar, shall, together with the sureties of the Registrar, as far as their covenants extend, be for the same cause, and in like manner liable as the Registrar and his sureties are in this section declared to be liable. 31 V. c. 20, s. 18.

Under the Registry Act of 1795 (3), and until modified by the Registry Act of 1865, the penalty attaching to the Registrar upon being convicted of non performance or omission of any duty devolving upon, or of any undue or fraudulent practice in the execution of, his office was a forfeiture of office, and a liability to pay treble damages with full costs of suit, to any person aggrieved thereby, who should sue therefor.

(1) Sec. 15.

(2) *Frazier v. Municipality of Stormont*, 10 U. C. R., 286.

(3) Sec. 10.

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An action having been instituted against the defendant, as Registrar, to recover treble damages under that statute, it was held to be a condition precedent to the right of the plaintiff to bring the action under the 10th section of that statute, that the Registrar should have been previously convicted, and that as he had not been so convicted, no cause of action had accrued to the plaintiff (1). It was, however, held in that case that such non-conviction would not be a bar to the plaintiff's right of action against the Registrar under any other section.

Conviction precedent to recovery of damages.

Upon the refusal of the Registrar to discharge a mandamus appertaining to the execution of his office, the proper remedy is to be sought for by mandamus (2).

Mandamus the proper remedy.

A Registrar having delivered an abstract insufficiently certified to according to the statute, a mandamus was granted against him to deliver a proper abstract and certificate (3).

A Registrar having given to an intending purchaser an abstract of title which, by mistake, omitted an outstanding mortgage; it was held, that a purchaser who had notice of such omitted mortgage could not prefer any claim against the Registrar, in respect to payments made upon such mortgage by the purchaser after the acquisition of such notice; and the Registrar, on finding his mistake, having bought up the outstanding mortgage, in order to protect himself, was held entitled to foreclose it (4).

Purchaser aware of omission in abstract cannot claim damages arising subsequent to notice.

(1) *Hamilton v. Lyons*, 5 O. S. 503.

(2) *Rex v. Collector of Liverpool*, 2 M. & S., 223; *Reg. v. Arnand*, 9 Q. B. 806; *Reg. v. Commr. of Excise*, 9 Jurist, 618; *ex parte Irving*, 7 Q. B., 156, S. C. 19 L. J., Q. B. (N.S.), 537; *in re Ridout*, 2 U. C. P. 477.

(3) *In re Registrar of Carleton*, 12 U. C. P., 225.

(4) *Brega v. Dickey*, 16 Gr., 494.

As the Registrar is a public officer, it will be presumed that he properly discharges his duty, according to the maxim—"Omne presumitur solemniter esse acta" (1); but this presumption is open to rebuttal (2).

Hours of attendance at office.

Holidays.

Holidays and hours of attendance under Registry Act of 1795.

Registry Act of 1846.

16 Vic., c. 187, s. 13.

Reg. Act 1865.

22. The Registrar or his Deputy shall, for the discharge of all duties belonging to the said office, attend at his office from the hour of ten in the forenoon until four in the afternoon, every day in the year, holidays excepted, and no instrument shall be registered by him on any holiday, nor shall any instrument be received for registration by him except within the hours above named. See 39 V., c. 25, s. 1; 39 V., c. 7, s. 2. Sched. B.

The hours of attendance at the office, and the holidays allowed to Registrars, have varied from time to time. Originally the Registrar was required to attend every day between the hours of 9 a.m. and 1 p.m., except upon Sundays, and during the first week in June, the last week in December, and the last week of the Holy Passion (3). This was altered by the next Registry Act (4), which required the attendance to be daily between 10 a.m. and 3 p.m., except upon Sundays, Christmas Day and Good Friday. The Registrars not appearing to relish such close confinement, it was enacted by 16 Vic., c. 187, s. 13, that, in addition to Sunday, the following holidays should be allowed in the Registry Offices, namely: Christmas, New Year's Day, Good Friday, Ash Wednesday, Easter Monday and the Queen's Birthday; to which was added every day appointed as a fast-day or holiday by the Governor's proclamation (5). No alteration was made either in the hours of attendance, or the holidays, appointed until the year 1876, when Ash Wednesday was removed from the list. By way

(1) *Abbott v. Geraghty*, 4, Ir. Ch., 15.

(2) *In re Monsell*, 2 Ir. Jur. (N.S.) 66; *Jack d. Rennick vs. Armstrong*, 1 H. & B., 727.

(3) Registry Act of 1795, s. 8.

(4) Registry Act of 1846, s. 15.

(5) Registry Act of 1865, s. 17.

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of compensation, however, the Registrar was authorized to close his office on any day appointed as a holiday by proclamation of the Governor-General. By an Act passed in that year (1), the provisions in force up to that time were repealed, and it was enacted that the hours of attendance should be between 10 a.m. and 4 p.m., and the holidays reduced to Sunday, New Year's Day, Good Friday, the Queen's Birthday, Christmas Day, and any day appointed by the Lieutenant Governor as a general fast-day or holiday in Ontario. The word "holiday" includes Sundays, New Year's Day, Good Friday, Easter Monday and Christmas Day, the days appointed for the celebration of the Birthday of Her Majesty, and of Her Royal Successors, and any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday, or for a General Fast or Thanksgiving (2).

Under the concluding words of this section it is submitted, that instruments, forwarded by mail to the Registrar, cannot be received by him from, or be taken out of the Post Office, after office hours, nor on the holidays referred to.

Mail matter cannot be received except during office hours and on working days.

23. The Registrar shall, when required, and upon being tendered the legal fees for so doing, make searches and furnish copies and abstracts of or concerning all instruments or memorials registered, mentioning any lot of land as described in the patent thereof from the Crown, or any lot, described by number or letter on any registered map or plan, subsequent to the registration of such map or plan, or any part of a lot where the same is clearly described and can be identified in connection with the claim of title, or has been ascertained by actual survey; and of and concerning all wills, deeds, orders, or other instruments recorded, as may be requested of him in writing, if a writing is demanded by the Registrar; and he shall exhibit the original registered instrument, originals and also the books of the office relating thereto when the party desires to make a personal inspection thereof, and shall give certificates of all copies and extracts under his hand and concerning the parties to any of such documents, or of the witnesses

Registrar to make searches and abstracts on certain conditions.

To exhibit Registrar; and he shall exhibit the original registered instrument, originals and also the books of the office relating thereto when the party desires to make a personal inspection thereof, and shall give certificates of all copies and extracts under his hand and concerning the parties to any of such documents, or of the witnesses

(2) 39 Vic., c. 25.

(1) Rev. Stat. (Ont.), c. 1, s. 8, s.s. 16.

to the same, or any other particulars which may be required, but no Registrar shall allow any such book or instrument to be taken out of his possession or custody. 3 V., c. 20, s. 20.

Fees must be tendered, and request made in writing if required.

The Registrar cannot be compelled to perform the duties imposed on him by this section, unless he be required and be tendered his lawful fees. The requisition must also be in writing if he should demand it. See Appendix A.

Under Reg. Act of 1846, Registrar could refuse inspection of books.

Under the Registry Act of 1846 (1), corresponding somewhat to this section, but containing no provision for the exhibition of the office books to the party desiring to personally inspect the same, it was decided, that the Registrar was justified in refusing to allow such party to inspect the Index book, and the Registry book of judgments; and a rule *nisi* for mandamus to compel him to grant such inspection was discharged (2).

Personal inspection granted by Reg. Act of 1865. Registrar should search.

The privilege of personal inspection of the books of the office was first accorded by the Registry Act of 1865 (3).

It will be seen from the language of this section that the Registrar is the proper person to make the required searches. The right to search cannot be claimed by the applicant. All that the latter is

Applicant entitled to personal inspection of originals and books of office.

entitled to, is to have a personal inspection of the original registered instruments, and the several books of office relating thereto, and the Registrar is required to submit such instruments and books of office to the applicant for the latter's inspection (4). In this case Galt, J., remarks, "I can find no authority for saying that any other person has a right, himself, to make searches and inspect the registry books" (5). This remark of the learned

Ruling of Galt J.

(1) Sec. 15, latter part.

(2) *In re Webster v. Registrar of Brant*, 18 U. C. R. 87.

(3) Sec. 18.

(4) *Ross v. McLay*, 26 U. C. P., 190.

(5) *Ib.*, p. 195.

Judge, so far as it relates to inspection by the applicant, appears to be in conflict with other passages where he expressly admits the right of the applicant to inspect the registry books. It is submitted, that the learned Judge's denial of the right of the applicant to make searches has reference to searches for original instruments only, and not to searches in the abstract index and registry books, which he could hardly avoid making, when he has the right of personally inspecting them.

The abstract must be certified to as containing all the registries which are recorded in the registry books in the office, against the parcel of land in question. A certificate upon an abstract was couched in the following terms: "I hereby certify that the above conveyances appear of record." The abstract was held not to be in compliance with the provisions of the statute, Con. Stat. U. C., c. 89, s. 67, (similar in this respect to the present section), it not being certified to as containing ALL the registries which were on record in the office upon the lot, and a mandamus was granted to compel the Registrar to deliver a proper certificate (1). The Registrar is liable to an action if he omit to mention any registered instrument in the abstract (2). A certificate, purporting to show the registered conveyances of land from the County Registrar's office, under the hand of the Deputy Registrar, was held not to be admissible evidence of the title, under Stat. 13 & 14 Vic. cap. 19, sec. 4 (3).

An abstract of the registries upon a certain lot, mentioning a patent, was held clearly not sufficient

How abstract should be certified.
Applies only to searches for original instruments.
Abstract not evidence of patent.

(1) In re Registrar of Carlton, 12 U. C. P., 225.

(2) Harrison v. Brega, 20 U. C. R., 324. See Brega v. Dickey, 16 Gt., 494.

(3) Gamble v. McKay, 7 U. C. P., 319.

evidence of the patent without producing an exemplification thereof (4).

Is abstract admissible evidence? *Quære* if an abstract is admissible evidence at all, if objected to? (3).

Abstract must be confined to part of lot desired.

Where a Township lot has been originally patented by the Crown in halves, and the title to each has continued separate, the Registrar must, upon application, furnish an extract of conveyances relating to either half desired. He cannot furnish and charge for extracts of conveyances relating to the other half exclusively (6). Certificates under this section are not required to be under the seal of office, unless upon request, as provided in section 24 *post*.

The form of certificate verifying the copies in accordance with the requirements of this section will be found in appendix A.

Registrar to have a seal of office, and for what purposes. 24 Every Registrar under this Act shall have a seal of office, to be approved of by the Inspector, and on request of any person or persons, body corporate or otherwise, shall furnish an exemplification or certified copy under his hand and seal of office of any instrument or memorial deposited, registered or filed, and kept in his office as such Registrar, which exemplification or certified copy shall be received as *prima facie* evidence in every Court of Law or Equity in Ontario, in the same manner and with the same effect as if the original thereof, in his office, was produced; and no Registrar or Deputy Registrar shall be required to produce any paper in his custody as such Registrar or Deputy Registrar, unless ordered by a Judge of some one of the Courts except on of Ontario, which order shall be produced to the officer issuing the subpoena requiring such production, and shall be by him noted in the margin of such subpoena, and signed by such officer. 31 V., c. 20, s. 20. See also *Rev. Stat.*, c. 62, s. 45.

Duty of Registrar.

Under this section it is the Registrar's duty, upon request of the person requiring it, to furnish exemplifications and certified copies of instruments deposited, registered, filed or kept in his office, while the previous section simply refers to copies and extracts under his hand.

(4) *Reed et ux. v. Ranks*, 10 U. C. P., 202.

(5) *Ib.*

(6) *Hope v. Ferguson*, 17 U. C. R., 219.

It is stated in this section that the exemplification and certified copies, under the hand and seal of office of the Registrar, are receivable as *prima facie* evidence in every Court of Law and Equity in the same manner, and to the same effect, as if the original instrument in his office were produced. But this is to be taken subject to the forty-sixth section of the Evidence Act (1), which is in the following terms :

46. In any action at Law, or suit in Equity, where, but for this Act, or "The Registry Act," it would be necessary to produce and prove any original instrument which has been registered in order to establish such instrument and the contents thereof, the party intending to prove any such original instrument may give notice to the opposite party ten days at least before the trial, or other proceeding in which the said proof is intended to be adduced, that he intends, at the said trial, or other proceeding to give in evidence, as proof of such original instrument, a copy thereof certified by the Registrar, under his hand and seal of office, and in every such case the copy so certified shall be sufficient evidence of the original instrument, and of its validity and contents, unless the party receiving such notice within four days after such receipt, gives notice that he disputes the validity of such original instrument, in which case the costs of producing and proving such original may be ordered by the Court or Judge to be paid by any or either of the parties as may be deemed right. 31 V., c. 20, ss. 49 & 51.

A form of the notice of intention to use copies will be found in Appendix A.

(1) Rev. Stat. (Ont.), cap. 62. See Reg. Act of 1865, s. 52, and Reg. Act of 1868, s. s. 49 & 51.

Certified copy of memorial evidence of its registration. Formerly not evidence of any other fact.

A certified copy of a memorial is evidence of the fact of registration (1). If the contents were to be proved for any other purpose than that of registration, it was formerly held that such certified copy was insufficient and the memorial itself should be produced (2). The trustees of a congregation having brought ejectment to recover the parsonage property, and proving a search for and loss of, the deed from the patentee to them, it was held that the copy of the memorial certified by the Registrar, in conjunction with the evidence of the attesting witness to the deed and memorial, was sufficient secondary evidence (3).

Written request.

The request should be in writing. See form in Appendix A.

Order obtained *ex parte*.

The order mentioned in this section is obtained *ex parte* (4). The party applying for the order should, in his affidavit, satisfy the Judge that there are good grounds for the production of the original instrument instead of using a certified copy, where such copy would be evidence. The Judge's order must not only be produced to the officer issuing the subpoena, but it must also be filed with him (5).

Contents of affidavit.

Order should be filed.

Subpœna should conform to the order.

It is furthermore essential that the writ of subpœna should be made to conform with the description of the document or documents referred to in the order (6).

Form of affidavit.

Forms of the affidavit, order, and memorandum

(1) *Hobhouse v. Hamilton*, 1 S. & L., 207; *Doe d. Prince v. Girty*, 9 U. C. R., 41. *Doe d. Brennan v. O'Neil*, 4 U. C. R., 8.

(2) *Ib.*

(3) *Trustees Ainleyville W. M. Church v. Grower*, 23 U. C. P., 533. For a learned and exhaustive essay on Memorials as Evidence, see *Leith's Real Prop.*, p. 127, et seq.

(4) See *Harris v. Barber*, 25 L. J., Q. B., 98; *Readman v. Bower*, 1 Jur. N. S. 1032.

(5) Reg.-Gen., H. T. 1856, No. 31.

(6) Reg. Gen. H. T. 1856, No. 31.

upon the subpœna, &c., are contained in Appendix A.

It seems that an attachment will not be granted against the Registrar for not personally attending upon the subpœna, unless it can be satisfactorily shewn that, at the time of the service of the subpœna, he was informed that his personal attendance was necessary (1).

Where attachment for non-attendance refused.

A Deputy Registrar or Clerk in the Registry Office cannot bring any registered document into Court upon a subpœna, without obtaining the previous permission of the Registrar: as such documents are not deemed sufficiently in the possession of such Deputy Registrar or Clerk (2).

Deputy Registrar producing documents with Registrar's permission.

The Registrar being a Public Officer having charge of documents for which he is responsible, and attending as a witness in his public capacity in relation to matters connected with his office, will doubtless be allowed a witness fee of four dollars *per diem*, besides mileage, his position being analogous to that of a Registrar of the Surrogate Court (3). Vankoughnet C. in his judgment in that case referred to the fact that Richard C. J. ordered four dollars to be taxed to a Clerk of the Assize who attended to give evidence in that capacity as a witness. It is the general practice to allow four dollars *per diem* in addition to mileage, to be taxed as witness fees to a Registrar attending with documents in his custody. In order to remove any doubt upon the point, it would doubtless be more satisfactory if the tariff were amended so as to allow this fee in express terms.

Fees for attendance.

Addition to mileage.

(1) *Bennett v. Jones*, 2 Chit. Rep. 407.

(2) *Thornhill v. Thornhill*, 2 Jac. & W., 347; *Amson v. Evans*, 9 Dowl. 493, 2 M. & G., 403.

(3) *Re Nelson* 2 Chan. Cham., R 252; see 7 U. C. L. J. (N. S.), 145.

Must deliver registered instrument to the party entitled thereto, and sue for his fees.

The duties imposed upon Registrars are not by any means summed up or compressed within the 20th and four following sections: other duties are referred to throughout the Act; and in addition thereto, he is required to perform many other matters devolving upon him under certain statutes which are enumerated in Appendix B, to which the reader is referred. A Registrar who refuses to deliver up a deed registered in his office, upon the ground that the fees for registration have not been paid, may be compelled to do so by mandamus (1). He can decline to receive the deed for Registry, unless the fees are paid to him (2); but, having received it without fees, he must deliver it to the party entitled thereto, and sue for his fees.

(1) *Doutre vs. Gagnon*, R.P.L. C. J. 303.

(2) See 96 post.

CHAPTER V.

BOOKS OF OFFICE.

§25. County Treasurer to provide proper books, one for each locality in the County. General Registry Books for the whole County, and for what purposes. New books to be furnished when required.

§26. If the Treasurer neglects to provide books.

§27. County Judge or Warren to certify books.

§28. When any place is separated from a County, or detached from one County and attached to another, certain books, etc., to be transferred. Statement to be furnished from General Registry Book. Duty of Registrar to see that same.

§29. Penalty on Registrar refusing to make such transfer, etc.

§30. Registrar removed or resigning to deliver up books, etc. Proceedings in case of refusal.

§31. Registrars receiving original memorials, etc., from another County.

§32. When any book becomes unfit for further use, copy to be made. Original to be preserved. Repairs of books, minus, etc.

§33. Each Registrar to make an abstract index to lots. What it shall contain.

§34. Also an alphabetical index of names for each locality.

§35. Indexes to be completed as to registrations before the passing of this Act.

25. The Treasurer of the County or City shall provide a fit County and proper Registry Book for each Township, reputed Township, City, Town, and incorporated Village, the limits whereof are defined by law, and all index and other books required for the business of the said office; and all such Registry Books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size or nearly so; and from the time such books are so provided and received at the Registry Office, the person who holds and executes the office of Registrar, shall keep and cause to be used for that purpose, a separate Registry Book for and of each Township, reputed Township, City, Town, and incorporated Village, the limits whereof are defined by law, within the County, for which he holds office; and he shall also keep and cause to be used for that purpose a general Registry Book for the whole County, in which shall be recorded all wills and instruments in which there is a general devise, conveyance or power affecting lands without local description, and in which book an alphabetical index of the names of all the parties mentioned by name in such instrument shall also be kept, and whenever any Registrar requires a new Registry Book, or any other book for the use of his office, the same shall, on his application therefor, in writing, be pur-

chased
when
required.

be furnished to him by the Treasurer, and all such books so furnished shall be paid for by the Treasurer out of the County or City funds as the case may be; and all such books so furnished, used and kept, shall be deemed to be the property of Her Majesty for the use and benefit of the public; and the Inspector shall have power, when, for the dispatch of business (he) finds it necessary, by order, in writing, to permit more than one Registry Book to be in use at the same time for the same Municipality. 31 V. c. 20, s. 22.

Prior to
Reg. Act
of 1846
only one
general
Registry
book in
use.

When Registry Offices were originally established it was considered sufficient to have but the one Registry Book for the County or Riding, in which all instruments were entered consecutively in the order received. Inconvenience having arisen from the absence of classification of entries, the Provincial Secretary was subsequently directed to provide separate Registry Books for each Township, reputed Township, City and Town, the limits whereof were then legally defined (1).

By that
Act Pro-
vincial
Secretary
provided
separate
Registry
Books

Uniformity in size was also directed, the books provided prior to that Act being of all sizes and shapes, without regard to appearance or convenience. The expense of providing such books was directed to be defrayed by the several District Councils. The Provincial Secretary was afterwards relieved from the obligation of providing books, that duty being transferred to the Treasurer of the County, who was also required to pay for the books out of County Funds (2).

At the ex-
pense of
the Dis-
trict
Council
By Act 1,
16 Vic.
c. 187,
County
Treasurer
substitut-
ed for Pro-
vincial
Secretary
and Coun-
cils.

The Registry Act of 1865 extended the obligation to City Treasurers, and included incorporated villages in the list entitled to separate Registry Books (3). The Registrar was also required to keep a general Registry Book for the whole County, for the recording therein of wills and instruments affecting lands, but containing no specific or local description which would enable the Registrar

General
Registry
Book.

(1) Reg. Act of 1846, s. 22.

(2) 16 Vic., c. 187, s. 3.

(3) Sec. 20.

to enter them in any book referring to a particular locality. This provision was re-enacted by the Registry Act of 1868 (1), which also authorized the Inspector, when he found it necessary for the despatch of business, by his written order to that effect, to permit more than one Registry Book for each municipality --that is, for each locality. The 25th section is taken from the last enactment.

The word "he" between the words "business" and "finds," in the third line from the bottom of the section, is a typographical omission in the Act as contained in the Revised Statutes.

Typo-
graphical
error in
section 25.

The expression "limits as defined by law" refers to the limits as settled by authorized survey, and also in some cases by statute. It is to be observed that the villages referred to in this section must be incorporated. As an incorporated village forms part of the Township in which it is situate, instruments affecting it must be entered in the Registry Book for the Township. Through inadvertence, separate Registry Books, having, in some cases, been kept for unincorporated villages, it was provided by the 78th section of the Registry Act of 1865, that such Books should be taken as part of the Township Registry Books; and by the 30th section of the Registry Act of 1868, it was enacted that separate books for unincorporated villages should not be further used. See section 87 *post*.

"Limits as
defined by
law."

The absence of any local or specific description of lands in an instrument of course precluding the Registrar from entering it in a book relating to any particular locality, it was essential that it should be entered in some book expressly intended for the recording of such instruments (2).

Absence of
local or
specific
description
in in-
struments.

(1) See, 22.

(2) See *Gardiner v. Blesington*, 1 Ir. Ch. 61; *Delacour v. Freeman*, 2 Ir. Ch. 633.

No objection to a will that it did not specify the lands devised.

It was held not to be a proper objection to the registration of a will, that it afforded no information upon the face of it as to what lands were affected by it (1). In the case of *Robson v. Carpenter* (2), Spragge, V.-C., in his judgment remarks, that "the transferee of real estate, transferred in general terms, must at his peril register the instrument under which he claims in the "city, town, township or place," in which the lands lie. Any other construction of the act would exempt from the necessity of registration wills containing a general devise of real estate, and conveyances conveying real estate generally. In trust deeds for the benefit of creditors, there is often a description of some land with a general conveyance of all other lands, of which the debtor may be seized. If a *bona fide* purchaser from the heir in the one case, and from the debtor in the other, were not protected, the consequences would be most mischievous." A grant of all the grantor's lands in the County of A., without mentioning what lands:—held to be within the Registry Act (3).

Grant of all lands in a County without more. Deeds of Assignment, &c., under Insolvent Act of 1875.

Under the Insolvent Act of 1875 (4) and amending Acts, a copy of the deed of assignment, or writ of attachment, certified by the respective officers mentioned therein, is required to be forthwith registered in every County registration district in which the insolvent has real estate. No description of the lands of the insolvent is contained in such deed or attachment, other than the words "estate and effects, real and personal." Such an instrument clearly falls within that class that affect lands without containing local description, and therefore

A description of lands is

(1) *Doe d. Lowry, v. Grant* 7, U. C. R., 125.

(2) 11 Gr. 293, at pp. 300-301.

(3) *Dillon vs. Costello*, cited Jones 410.

(4) Sec 19.

are entered in the General Registry Book (1). It is attached to a Deed provided by the same Act; that if such deed or writ of Assignment attachment be registered in the Province of Quebec, it should be accompanied by a description of the real estate belonging to the insolvent, together with a notice of the transfer of such deed or writ of attachment to the Assignee. By the sixtieth section of that Act the deed of re-conveyance from the assignee to the insolvent, upon the execution of a deed of composition and discharge, need not contain any further or more special description of the effects and property re-conveyed than is required in the deed of assignment. There seems to be no valid reason, why the description of the insolvent's lands should not accompany the registration of the deed of assignment or writ of attachment in this, as well as in the neighbouring Province. Why there should be any discrimination in the matter does not clearly appear. It is suggested as to registry of deeds of assignment, submitted that the Insolvent Act should be amended, so as to require the insolvent, upon executing the deed of assignment, to furnish to the official assignee a list of all real estate owned by him, or in which he has any legal or equitable interest, duly sworn to, and a copy of such list duly certified to by such assignee should accompany the registration of the deed of assignment. It is admitted that it would be impracticable to have a similar provision in the case of a writ of attachment against an absconding insolvent; yet even in such a case, a list of the lands of the insolvent could be ascertained by the assignee and registered by him in the proper Registry offices.

(1) See remarks of Sugden C. Battersby v. Rochford, 8 Ir. Eq. 284, also Gubbins v. Gubbins, 1 D. & M., 160 (n); Scully v. Scully, C. & A., 77 (n).

Every obstacle to a full and searching inquiry into titles to land should be removed.

Alphabetical Index.

Registrars should be careful to have a full alphabetical index to the General Registry Books. Not only should the names of the parties executing the instruments recorded therein appear in such index, but also the name of every person mentioned in the body of the instrument. For example, in the case of a will, the name of every devisee or other person taking an interest thereunder whether beneficially, in trust, or otherwise, should be mentioned in the index. The method sometimes

Omission to index every name in instrument.

adopted of referring to such parties under the term "*et. al.*" in the index, is not only a direct contravention of the requirements of the statute, but affords no information to the party searching a title. Any person, prejudiced by such a negligent compliance with the statute, would, doubtless, be entitled to look

Registrar entitled to the possession of Books of Office.

to the Registrar for compensation. Although the books of office are deemed to be the property of Her Majesty, the right to the possession of such Books is vested in the Registrar *virtute officii*. If such books be taken out of the possession of the Registrar, either through force or fraud, it will be necessary, in asserting his right and claim thereto in an action of replevin, to show on the application for the writ, that he holds the office of Registrar, and is, in consequence of such tenure, entitled to the books (1). Other books for the use of Registry offices are required to be furnished or provided, in addition to those enumerated in this section, under special statutes, a list of which statutes is contained in appendix B.

Replevin thereof.

(1) *Hammond v. McLay*, 10 U. C. L. J. 269; See *Hammond v. McLay, et. al.*, 24 U. C. R. 54; See page 73 post.

Forms of Registrar's requisition and order of the Registrar are contained in Appendix A.

Form of requisition, &c.

26. If the Treasurer refuses or neglects to furnish such books within thirty days after such application therefor, the Registrar may provide the same and recover the costs therefor from the neglects Municipality of the County or City so in default. 31 V. c. 20, to provide s. 23.

If the Registrar Treasurer neglects to provide books.

The Registry Act of 1846 contained no provision for permitting the Registrar to obtain the necessary books, if the Provincial Secretary should omit to supply them. When the County Treasurer was substituted, as before referred to, for the Provincial Secretary, a provision identical with the present section was enacted (1).

No similar clause in Reg. Act of 1846.

By the preceding section, the application of the Registrar is required to be in writing, and should set out clearly what books are desired for the use of the office. It is essential to the Registrar's right to provide the books, and to recover the costs thereof by action against the Municipality, that a demand should have been made by him in writing upon the Treasurer, followed by a refusal or neglect on the part of that official to comply within thirty days after such application.

What the application should contain.

After the 16 Vic., cap. 187 came into force A, the Registrar of Kent, applied to G, the Registrar of Huron, to order books for his office; G, ordered the books from the plaintiff in A's name, and the books were charged to A. Three other books were afterwards purchased, which the plaintiff charged in his own account books to "The County of Kent for Mr. A." Upon an action of assumpsit for goods sold and delivered, and upon an account stated, brought by the plaintiff against the Municipal Council of the County of Kent, it was held, that, as the defendants did not directly or indirectly order

Application and refusal must precede right of action.

(1) 16 Vic., c. 187, s. 3.

the books from the plaintiff, the plaintiff's case rested solely upon the effect of the third section of that statute; and no proof having been adduced by him of an application on the part of the Registrar having been made to the Treasurer of the Municipality for the required books, there could not have been that refusal or neglect to furnish them after application, which would have entitled the Registrar to obtain them himself. It was therefore held, that the plaintiff had no right of action against the defendants (1).

Registrar alone entitled to bring the action. From the language of this section it would appear that the Registrar is alone entitled to bring an action against the Municipality so in default.

County Judge or Warden to certify books. 27. The Judge of the County Court or Warden of the County, or Mayor of a City, shall give a certificate respecting each Registry or other Book, so furnished or provided, in the form of Schedule D to this Act, or to the like effect, and in case of refusal shall be liable to the same penalties as are imposed by section thirty of this Act. 31 V. c. 20, s. 24.

No material change in this form since Reg. Act of 1846. The certificate does not vary substantially in form from that given by the Provincial Secretary after the Registry Act of 1846 came into force and until the 16 Vic., cap. 187. This latter Act required (2) the certificate to be given by the Judge of the County Court of the County in which the Registry Office was situated. The Registry Act of

16 Vic., c. 187. 1865 (3) extended the authority to certify such books to the Warden of the County, and the same authority was afterwards granted to the Mayor of a City by the Registry Act of 1868 (4), which also subjected these officials to a penalty in case of their refusal to comply with this section. By reference to Section 30 *post*, it will be seen that the penalty

Reg. Act of 1868.

Penalty

(1) Read *v.* Municipal Council of Kent; 13 U. C. R. 572.

(2) See 3.

(3) See 22.

(4) See 24.

is a fine not exceeding two thousand dollars, and under sec. 30, post.
imprisonment in addition, in the discretion of the Court, for a term not exceeding one year.

23. When any County, City, Town, incorporated Village, Provision Township, reputed Township, or place making part of a County where any wherein a separate Registry Office is or has been kept, is or has place is been detached from some Union or County and set apart for separated registration purposes, or attached to or made part of another from a County, for which a separate Registry office is also kept, or where County or a separate Registry Office is established in any County or Junior detached County, according to the provisions of this Act, the Registrar from one of the County from which such localities are so detached, shall County deliver to the Registrar of the County set apart, or of the County and attached whereunto the same is attached, the Registry Book or Books, attached to and all other Books and Indexes which have been kept according another. to the statute exclusively for such County, City, Town, incorporated Village, Township or reputed Township or place, the orig- Certain inal memorials and original duplicates of all deeds, conveyances, books, &c., and wills of, or relating exclusively to, any lands within the same, to be and all other instruments, and all maps of Cities, Towns or Vil- transfer- lages within the same, lodged according to law in his office; also- red.
a statement of all titles to lands within such detached localities, registered before separate Registry Books were kept for each Township or place, which statement shall contain a schedule of all memorials and other registered instruments which are so delivered, and also an exact copy of all memorials and other registered documents affecting such lands which, by reason of their relating to two or more localities cannot be delivered, and such statement shall also contain the same particulars with regard to wills, and shall be accompanied by indexes of names, and an index of lots, which shall be considered as a part of the said statement; such Registrar shall also furnish therewith a statement and copy of all wills and other instruments registered in any general Registry Book, and shall carefully compare such statement with the original entries in the Registry Books in his office, and endorse a certificate to that effect on the statement when furnishing the same; the Registrar receiving such Books and his successors, shall keep the same among the Registry Books of his office, and deal with them in all respects in like manner as those originally supplied to and kept therein 31 Vic c. 20, s. 25.

Statement to be furnished from general registry book.
Duty of Reg. receiving same

The establishment of new registration divisions No provision made by Reg. Act of 1795 for new registration Divisions.
within the limits of older divisions, and the re-disposition and re-arrangement of the books of office and muniments of title consequent upon such setting apart, does not appear to have been contemplated by the framers of the Registry Act of 1795, as no provision was made for such an exigency. And it was deemed sufficient when the possibility of

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of 1846.

14-15 Vic.
c. 5.

16 Vic.,
c. 187.

18 Vic.,
c. 127.

such an occasion transpiring presented itself, to require of the Registrar of the older registration division to furnish to the Registrar of the new division a statement of the registration of such titles as had been registered in the former division, affecting lands lying within the part so separated, such statement containing simply the dates of the several instruments, and the particulars of the lots or parcels of land to which they respectively referred (1). For these statements they were entitled to collect fees payable by the new County (2). By the Act 16 Vic., cap. 187 (3), it was provided that this statement should contain, in addition to the particulars already mentioned, the names of the parties to the instruments and of the witnesses, and should be accompanied by an index thereto. The statement had also to be endorsed with a certificate, that the same was carefully compared with the original entries and a statement of wills registered in the General Registry of Wills. The Registrar was further required to deliver to the Registrar of the Division so set apart the Registry Books relating exclusively to those localities lying within such division.

Shortly afterwards it was enacted (4), that the Registrar of the County, from which any portion of such County was set apart for registration purposes, should, in addition to the books, plans and statements first referred to, deliver to the Registrar of the County, to which such portion should be attached, the original memorials of all deeds, wills and other conveyances relating exclusively to the lands within such portion set apart, on pain of

(1) Reg. Act of 1846, s. 32.

(2) 14 and 15. Vic., c. 5, s. 17.

(3) 88. 2 and 3.

(4) 18 Vic., c. 127, s. 6.

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being guilty of a misdemeanour, in case of neglect to comply with this provision within three months after demand. These amendments were consolidated in Con. Stat. U. C. cap. 89, s. 72. Where a separate Registry Office is established in a City or Town, the books which have been kept by the Registrar for the County, for the use of the City, must be delivered to the Registrar for the City; and it will be no excuse for the non delivery of such books, that memorials, relating to land lying without the City or Town, have been improperly entered in such books (1).

C S U. C.,
cap 89.

On separation the books must be delivered notwithstanding improper entries therein.

The Registrar of the County of Frontenac, after the City of Kingston was separated therefrom for registration purposes, furnished to the Registrar for the City a statement of titles to land, before separate books had been kept for the City, and brought an action against the City to recover his fees for so doing. It was held, that the plaintiff was not bound to furnish the copies which he had supplied, and that the defendants were not obliged to pay for them; the absence of the words "and set apart for registration purposes" being a *casus omissus* from the statute, Con. Stat. U. C., cap. 89; and that the plaintiff could not have been prosecuted under the seventy-third section of that Act, for a misdemeanour for refusal to comply with the terms thereof (2).

The Registrar is entitled to be paid for furnishing the statement and copies under this section. See sec. 92, ss. 7 *post*.

Payment of fees

29. Any Registrar who refuses to deliver such books, plans, duplicates, indexes, or memorials, as aforesaid, within six months after demand in writing therefor, made upon him by the Registrar entitled to receive the same, shall upon conviction thereof before any Court of Oyer and Terminer and General Gaol Delivery,

Penalty on Registrar refusing to make such transfer, &c.

(1) Reg. of London v. Reg. of Middlesex, 17 U. C. R., 382.

(2) Durand v. City of Kingston, 14 U. C. P., 439.

forfeit his office, and be liable to a fine, in the discretion of such Court, not exceeding four hundred dollars. 31 Vic. c. 20, s. 26.

This provision was first introduced by the 18 Vic. cap. 127 (1).

Formerly the Registrar was only allowed three months. This was extended to six months, as at present, by the Registry Act of 1865 (2).

For form of demand under this Section see Appendix A.

Registrar removed or resigning, to deliver up books, etc. Proceedings in case of refusal.

30. In case any Registrar is removed from or resigns his office, he shall forthwith deliver up all books, plans, instruments, memorials and indexes in his possession, as such Registrar, to the person who is appointed Registrar in his stead, or to any other person who may be specially appointed in writing by Her Majesty's Attorney-General of Ontario to receive the same, and if such Registrar refuses to do so, the Attorney-General may direct the Sheriff of the County to seize and take immediate possession of the same wheresoever found, and the Registrar so offending shall be liable to a fine, in the discretion of the Court not exceeding two thousand dollars, and to any term of imprisonment, if the Court thinks fit to impose it, in addition to the fine, not exceeding one year. 31 Vic. c. 20, s. 27.

First introduced by Reg. Act of 1865.

No statutory provision was made, prior to the coming into effect of the Registry Act of 1865 (3), for the enforcement of the delivery up of the books, plans, instruments, etc., in his possession by the retiring Registrar to the person appointed as his successor, or to any other person properly authorized to receive them, the person appointed as his successor being left to seek his own remedy.

Before that Act party claiming books was left to action of trespass.

M. having claimed the office of Registrar, which was then in the possession of one H., applied for a mandamus *nisi* directed against H., requiring him to deliver up to M. the books and papers in his custody or control. Having obtained the mandamus *nisi* M. proceeded to the Registry Office, accompanied by two constables. H. being absent,

- (1) See 6.
- (2) See 24.
- (3) See 25.

M. demanded the books and papers from H.'s wife, reading over to her what purported to be a peremptory mandamus as his authority for making the demand, but refused to permit her or her solicitor to examine it. M. and his assistants then removed the books. A rule for an order against M. directing him to restore the books and papers so obtained by M. was refused, the Court holding that H. could bring an action of trespass against M. claiming a mandamus in such action, and that as H. could obtain full relief by an ordinary suit, the application by him for a summary remedy should be discouraged (1).

A writ of replevin had been previously applied for by H., but was refused on the ground that the affidavit for the order to obtain such writ did not disclose that H. held the office (2).

Writ of replevin.

A *quo warranto* information on behalf of H. to try the right of M. to the office was also refused, and the applicant was left to his action for the fees of office against the alleged intruder (3). H. accordingly brought an action for such fees, and being held to be the Registrar, *de facto*, was considered entitled to the fees (4). Upon appeal, however, this finding was reversed (5) upon the grounds referred to in pages 27 and 28.

Action for fees.

31. All Registrars who receive from another Registrar original Registrars instruments, memorials, and statements of title therewith, shall, receiving as soon as practicable, make full and complete copies of all such original memorials and instruments in proper Books, and in the same memorials order and relation in which they were originally registered, insert, etc., from the margin of the Registry Book, opposite to each memorial or instrument, the number thereof, and the date and time at which such memorial or instrument was registered, and shall have endorsed on the back thereof by the Registrar, the date and time at the time of the original registration thereof. 31 U. C. R. 20, 25.

(1) *In re McLay*, 24 U. C. R., 54.

(2) *Hammond v. McLay*, 10 U. C. R., 34.

(3) *In re Hammond v. McLay*, 24 U. C. R., 36.

(4) *Hammond v. McLay*, 26 U. C. R., 434.

(5) *Hammond v. McLay*, 28 U. C. R., 464.

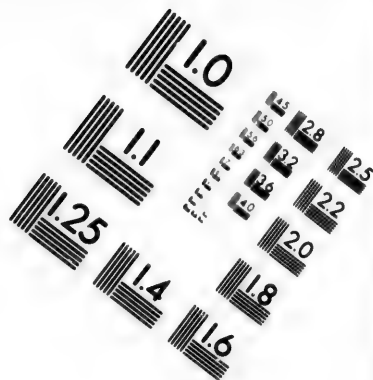
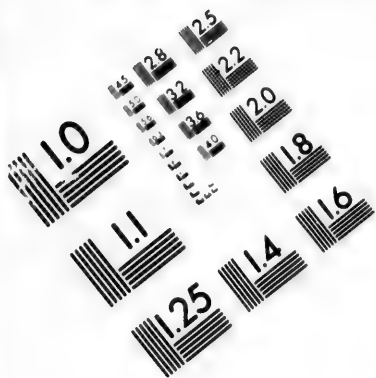
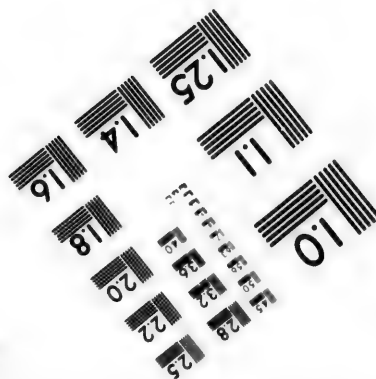
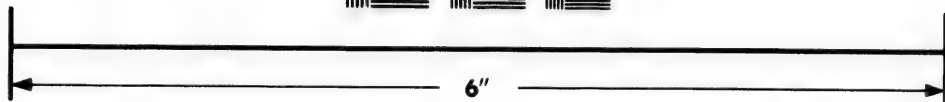
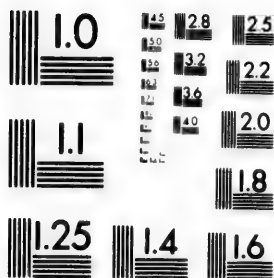


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When this duty was imposed.

This duty, devolving upon the Registrars who formerly had received, or might receive, from another County original memorials, etc., under the provisions of section twenty-eight *ante* and corresponding enactments, was first imposed by the Registry Act of 1865 (1), which was retrospective in its operation. It was deemed advisable that copies should be made of these instruments, not only to prevent the wear and tear necessarily accompanying their frequent handling, but also for the convenience of both the Registrar and the public.

Fees for services under this section.

No objection to Registrar's right of action that memorials were made by his predecessor.

The Registrar is allowed the fee of ten cents per folio for services rendered under this section (2).

The plaintiff as Registrar brought an action against the defendants, for services rendered by him under the corresponding section of the Registry Act of 1865, and another section thereof (3) prior to the separation of the Counties of which he had been Registrar. It was held, that the defendants were jointly liable to the plaintiff, and that it was no objection to his right to recover, that the memorials had not been received by him but by his predecessor in office, as the statute pointed to the officer acting as Registrar, and not to any one in his private or personal capacity (4).

When any book becomes unfit for further use, copy to be made.

32. Wherever, in any Registry Office, any Book, from age or use, is becoming obliterated, or unfit for future use, the Inspector shall, by directions in writing under his hand, order such Book to be re-copied in a Book of like description as that required under the twenty-fifth section of this Act, so far as the same can be deciphered by examination thereof, and of the original memorials relating thereto, which Book having the order of such Inspector for the copying thereof, under the hand of the Inspector, inserted at the beginning of the Book and having the affidavit or declaration of the Registrar or his Deputy, at the end of such Book, to the effect that such Book, so copied is a

(1) Sec. 26.

(2) See sec. 92, s.s. 7, *post*.

(3) Sec. 33 corresponding to sec. 35, *post*.

(4) *Campbell vs. Corp. of York & Peel*, 26 U. C. R., 635, affirmed 27 U. C. R. 138.

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true copy of the original Book of which it purports to be a copy, shall be to all intents and purposes, accepted and received as the original Book, and as *prima facie* evidence that such copy is a true copy of the original Book; every such original Book shall, nevertheless, be carefully preserved, notwithstanding a copy Original thereof has been made, and every such Registrar or his Deputy, to be preserved shall be obliged to make his affidavit or declaration in this section mentioned, and the Inspector shall have power to order any Book which is out of repair and unfit for use to be repaired in such manner as he thinks necessary; and he shall also have power to order plans and maps deposited in any Registry Office, to be copied, mounted or bound, to be preserved in such manner as he thinks necessary. 31 V., c. 20, s. 29.

Repairs of
books,
maps, &c.

The object of this section is apparent. It is of the utmost importance that the evidence and muniments of title to the landed property of the public should be carefully and jealously preserved. Some of the books used in the earlier period of registration must, from the absence of proper binding, indifferent quality of paper and ink, be becoming fast unfit for reference or use, and this section is intended to meet such a difficulty. A careful comparison of the entries in the substituted book with those in the older book, and with the several memorials relating thereto, coupled with the affidavit of the Registrar referred to in this section, will be a sufficient guarantee of the correctness of the entries in the substituted book, while the preservation of the original book will satisfactorily set at rest any dispute or doubt questioning such correctness. Forms of the Inspector's order and Registrar's declaration are inserted in Appendix A.

Object of
section.

33. The Registrar shall, in a proper book kept for the purpose, and called the "Abstract Index," keep entered under a separate and distinct head each separate lot or part of a lot of land as originally patented by the Crown, or as defined on any plan of the subdivision of any such land into smaller sections or lots after such plan has been filed in the Registry Office; and every instrument registered on and after the first day of January, one thousand eight hundred and sixty-six, mentioning any such parcel or lot of land or other subdivision, and the names of every person to each instrument and the nature of it, (such as a "Will," "Grant," "Lease," "Power of Attorney,") the numbers of registration of all such instruments for each Municipality

Each Registrar to make an abstract index to lots. What it shall contain.

in which the land mentioned therein is situate, and the day, month, and year, of their registration, and the consideration or mortgage money mentioned therein, shall, by the Registrar, in addition to all entries by law required, be entered in regular order and rotation, under the proper heading of each such separate parcel or lot of land mentioned in such instrument, and the Book or Books to be so kept by each Registrar, for the purpose of making the said entries, shall be in the form or nearly so of Schedule M to this Act. 31 V., c. 20, s. 30.

Alphabetical Index only Index under Reg. Act of 1846,

By the Registry Act of 1846 (1) the Registrar was required to keep an alphabetical calendar of the Cities, Towns, Townships, etc., in which the numbers of the memorials and names of parties were inserted, but this by no means assisted the public in their inquiries. The necessity for such a book as "The Abstract Index" in which all the instruments specifically relating to, or affecting the title to, land could be grouped together under one head or department was long experienced, and the want was at last supplied by the Registry Act of 1865 (2).

Abstract Index first required by Reg. Act of 1865.

Benefits conferred by the Abstract and Alphabetical Indexes.

Taken in connection with the General Registry Book, provided the latter is supplied with the full index required by section 25 *ante*, and the alphabetical index referred to in section 34 *post*, a person desiring to inquire into the nature and condition of the title to a particular parcel or lot of land, has at his disposal every reasonable means to facilitate his enquiry and acquire the desired information.

Instrument should be registered before indexed, &c. Names of parties.

It is to be observed that no instrument can be entered upon the Abstract Index unless the same has been duly registered, the Index itself being no part of the record.

Not only is the Registrar required to enter therein the nature of each instrument, such as "will," "grant," etc., but he must, in addition,

- (1) See 8.
- (2) See 30.

enter the names of "every person to each instrument." The word "person" is probably intended for "party." An entry under the column for "Grantor" or "Grantee" in the manner following: "John Smith *et al*," where there are more grantors, or grantees, as the case may be, would not be a compliance with this section. See page 66 *ante*.

The object of the index is plain. It presupposes registration and is designed to facilitate registration." It follows, that any omission by the Registrar to enter an instrument in such index amounts simply to a non-performance of a subordinate duty on his part, and does not of itself invalidate the registration of such instrument, or deprive the party claiming thereunder of any priority he might otherwise possess (1).

Object of the Index.

As this index is no part of the record, a mistake in it does not vitiate or impair the notice afforded by a registration otherwise properly made (2).

Mistake in index.

The holding that the registration of a deed required to be registered constitutes notice to subsequent purchasers and encumbrancers, although such instrument be not entered in the index, proceeds upon the ground that, under the statute, the index is no part of the registration; and it could not be sustained on the ground of constructive fraud. The cases rest upon a statutory interpretation (3).

Index no part of record.

There are conflicting decisions upon the point in the United States Courts (4).

It is said that the index is not designed for the

Index for the benefit

(1) See *Lawrie v. Rathburn*, 38 U. C. R. 255, and *Mutual Life Ins. Co. v. Drake*, 1 Abbott (N.Y.) N. C. 38.

(2) *Green v. Carrington*, 16 Ohio, 548; *Curtis v. Lyman*, 34 Wa. 388.

(3) *Curtis v. Lyman* *supra*; *Bishop v. Schneider*, 46 Mo., 472.

(4) *Burney v. McCarty*, 15 Iowa, 510; *Miller v. Bradford*, 12 Iowa, 24.

of the
public.

protection of the party whose instrument is registered, but for the convenience of the public desiring to search for registrations, and that so far from it forming part of the record, it merely, as its name indicates, points the way thereto (1).

Registrar
liable to
party in-
jured by
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index.

A person prejudiced or injured by any omission in the index is, of course, entitled to bring an action against the Registrar for damages sustained owing to such omission (2).

The Registrar is liable to damages occasioned by errors in the index (3).

Also an
alphabeti-
cal index
of names
for each
locality.

34. Every Registrar shall also, for each Township, City, Town, and incorporated Village, keep an Alphabetical Index of names, exhibiting in columns the number of each instrument, the names of the different grantors, and the names of the grantees, according to the form of Schedule N to this Act. 31 V. c. 20, s. 31.

Object of
this index.

The Abstract Index being arranged under the enumeration of the several lots or parcels of land, thus enabling a person enquiring into the title affecting any particular lot to prosecute his search, this section enables him, on the other hand, to ascertain if any particular person has disposed of or acquired any land; and, if such be the case, the number of the instrument, by which the transfer is made, being noted opposite such name, enables the enquirer to ascertain the particulars.

Omission
to index
an instru-
ment does
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tration.

Omission to make the proper entry relating to an instrument in this Index does not invalidate the registration of such instrument. *Laurie v. Rathbun et al.*, (4) is an instructive case upon this point. In that case, which was an action of ejectment, the plaintiff claimed Lot 25 under a deed from the heirs-at-law of S., the patentee, which was executed in 1875. The defendants claimed under a deed from

(1) Jones on Mortgages, § 553.

(2) Harrison v. Brega, 20 U. C. R., at p. 330.

(3) Mut. Life Ins. Co. v. Drake; 1 Abbott (N. Y.) N. C. 38.

(4) 38 U. C. R., 255.

S., dated and registered in 1867, but the Registrar had omitted to mention the defendant's deed in the alphabetical index. In consequence whereof, when the plaintiff inquired at the Registry Office before taking his deed, he was informed that the patentee had made no reconveyance. Held, that under the Registry Act of 1865 the Registrar's omission did not invalidate or deprive the defendant's deed of its priority.

Harrison, C. J., remarked in this case that "it would be trifling with common sense to hold that the omission of such a duty avoids a registration. It might with equal propriety be argued that there can be no book without an index, or that the omission to provide an index proves that the book does not exist. Cases in which it has been held that a registration defective on the face of it is in effect no registration, are distinguishable (1). If the instrument be received by the Registrar and entered in the registry book and filed in the office, it is to be deemed registered, although there may be some defect to the affidavit or other proof for registry (2). So, I think, on the same principle, the instrument must be deemed registered, although the Registrar or his deputy afterwards omit to index it in the alphabetical index. * * * It would be against reason to hold that the registration is defective merely because the Registrar omits to index it or mention it to persons making inquiries in reference to a particular parcel of land."

35. In order to make every Index required by this Act complete, it shall be the duty of each Registrar in all cases when the Abstract or Alphabetical Indexes have not been heretofore kept

(1) Robson v. Waddell, 24 U. C. R., 574. See Harding v. Carry, 10 Ir., C. L. R., 140.

(2) Magrath v. Todd, 26 U. C. R., 87; Reg. v. Registrar of Middlesex, 15 Q. B., 976; Jones v. Cowden, 34 U. C. R., 345; 36, Vic. c. 17, s. 6.

to registrations substantially as herein provided, to enter all the registrations affecting lands, which may have been recorded before the passing of this Act, in the same manner and in the like books as provided passing of in the thirty-third and thirty-fourth sections of this Act. 31 V., this Act. c. 20, s. 32.

Supplemental effect of this section.

This section is merely supplemental to sections twenty-five and thirty-three *ante*, and is designed to make the indexes complete. The Registry Act of 1865 (1) not providing for the payment by a City, in which a separate office had not been established, of any portion of the fees and allowances rendered under the thirty-third section of that statute, which corresponds to the present section, that defect was shortly after remedied (2).

Fees for preparation of Abstract Index not allowed for Alphabetical Index.

An allowance for services under this section, so far as work in connection with the Abstract Index is concerned, is regulated by section ninety-two (ss. 8) *post*, but no fees are allowed for the preparation of the Alphabetical Index.

The plaintiff as Registrar brought an action against the defendants for services rendered by him under section thirty-three of the Act of 1865, similar to the present section, *inter alia*, prior to the separation of the Counties of which he had become Registrar. It was held that the defendants were jointly liable to the plaintiff (3).

(1) Sec. 70.

(2) 81, Vic. c. 10.

(3) *Campbell v. Corps. of York and Peel*, 26, U. C. R., 635, S. C. 27, U. C. R., 138.

CHAPTER VI.

INSTRUMENTS THAT MAY BE REGISTERED.

§36. Instruments which may be registered.

§37. What leases must be registered.

36. Subject to the provisions of the next section, all instruments mentioned in the second section of this Act may be registered. 31. V. c. 20, s. 33.

The list of instruments capable of registration has gradually enlarged since the introduction of the Registry Act of 1795, as by reference to the statutes in the Appendix will appear. As marked in the notes to section two *ante*, the language employed in that section extends the provisions of this Act to every document, whether under seal or not, formal or informal, which affects even in the slightest perceptible degree lands, or interests or rights connected therewith. The only exception is that contained in section thirty-seven *post*.

As has been already remarked in connection with section two *ante*, with the exception of that particular class of leases alluded to in the following section, the statute has in contemplation the registration of all instruments affecting lands, whether based upon a consideration or not, and which are in their nature or effect legal or equitable (1).

In addition to the provisions of the second section, there are many instruments which are required to be registered under various statutory

(1) *Ante* p. 15; *Bushell v. Bushell*, 1 Sch. and L. 90, 100; *Gardiner v. Blesinton*, 1 Ir. Ch., 64; *Murphy v. Leader*, 4 Ir. L. R., 139.

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Statutes.

enactments. A list of such instruments is contained in Appendix B, to which the reader is directed. This list does not, however, include instruments required to be registered under those Acts coming within the designation of private Acts, and which no person is affected by, other than those immediately interested.

What lease. 37. This Act shall not extend to any lease for a term not exceeding seven years, where the actual possession goes along registered, with the lease; but it shall extend to every lease for a longer term than seven years. (1) Sec. 29. + 69.

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This provision is not contained in the West Riding Act. In the other English Acts the words "actual possession and occupation" occur. This expression was followed in the Registry Act of 1795 (1), which also excepted leases at rack rent. The words "and occupation" were omitted in the Registry Act of 1846 (2), as was also the exception in favor of leases of rack rent (3). Since that Act no alteration has been made in this respect. Originally, the exception extended to a lease not exceeding the term of twenty one years. It was reduced to the term of seven years as we now have it by the Registry Act of 1865 (4), which, as if to leave no doubt upon the point, especially provided that the Act should extend to leases exceeding that term. The meaning of this section is, that a tenant, under a lease within the statute, is enabled to retain priority over a subsequent vendee or mortgagee of his lessor, even though such vendee or mortgagee have no knowledge of the existence of the lease. It will be remarked that only those leases whose terms do

(1) Sec. 11.

(2) Sec. 18.

(3) "Rack rent" is rent of the full annual value of the thing demised.

(4) Sec. 67.

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not exceed seven years, which are accompanied by actual possession, are exempt from registration in order to retain priority. A lease unaccompanied by actual possession must be registered in order to preserve priority thereunder, without regard to the duration of the term demised thereby.

In noticing the various decisions rendered upon this section we will consider in their order those affecting

I. The creation and commencement of the term under the exception.

II. The effect of extension of such term by actual renewal or covenant to renew.

III. Equitable terms.

IV. Terms commencing *in futuro*.

V. Assignment of leases; including registration of leases.

VI. Effect of notice of unregistered lease requiring registration.

VII. Nature of the phrase "actual possession going along with the lease."

VIII. When lessee should be in possession, and

IX. Duration of such possession.

I. The creation and commencement of excepted term.

The "term not exceeding seven years" must be a term actually created by the lease.

From the tenor of the cases bearing upon the point, it is clearly to be deduced that the term must commence from the date of the making of the lease.

II. Effect of extension of term by actual renewal or covenant to renew.

If the term, in its original creation, do not exceed seven years, an extension of such term beyond that period by a renewal will not have the effect of

leases for longer terms.

Effect of exemption.

Actual possession must accompany leases under 7 yrs.

All leases must be registered if actual possession does not go along with them.

Classification of decisions.

Creation and commencement of term.

Must be actually created.

Commences from date of making lease.

Effect of extension.

of term originally within exception does not bring it without the Statute.

Nor does covenant to renew in like case.

causing the lease to be without the exception of the statute, provided actual possession accompanies the lease during the original term created thereby and the renewal thereof. Nor does a covenant contained in a lease to renew the term thereby demised affect such lease under this section. Prior to the reduction of the term from twenty-one years to seven years, A. demised to B. a lease for fourteen years, covenanting in the lease to renew at the expiry of that period for a further term of fourteen years, unless he, A., should desire to pay for the improvements made by B. upon the demised premises during the first term. This lease was registered, and subsequently assigned as to part of the demised premises, but the assignee did not register. C. devised his interest in the premises and lease to B., who, subsequently to the assignment, mortgaged the whole premises to the plaintiffs. This mortgage was duly registered. It was held, that the covenant for renewal did not extend the term so as to bring the lease within the Registry Act of 1846, then in force, and that the mortgage to the plaintiffs could not affect the part assigned (1). It was contended for the plaintiffs that the covenant to renew the first term practically converted the lease into an equitable demise for twenty-eight years, subject to termination at the end of fourteen years, at the option of the lessor; however, the provisions contained in the lease, so far as they related to the second term, were construed as amounting only to a covenant to renew, and not to a subsisting lease (2). Burns J., in his judgment, remarks, "No present term was created

(1) *Doe d. Kingston, B. S., v. Rainsford*, 10 U. C. R., 236.

(2) See *Evans v. Thomas*, Cro. Jac., 172.

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beyond fourteen years by the lease, and that, if a second term of fourteen years was to exist, it must be by a new instrument to be executed between the parties. Without a new lease for the second term of fourteen years, the party claiming the estate under the present instrument would have no legal title; and without such new lease, the premises would not be affected in law in anywise. * * * What the legislature meant clearly was a *legal term*, less than twenty-one years; and here in this lease is no legal term beyond fourteen years."

A lease of land for four years, with covenant to renew for four years more, was held not to require registration, actual possession having gone along with the lease; the covenant for renewal, as between the lessee and subsequent mortgagees of the lessor, for such further term not being regarded as a lease to commence *in futuro*, but as an extension of the original term (1).

"That 'actual possession goeth along with the lease,' can, I think, have only one meaning, and cannot extend to a lease to commence at a future day, under which no possession can as yet be going" (2).

If a lease contain a *toties quoties* covenant for renewal it is not within the exception of this section (3).

Where A. being a sub-tenant, under a lease for fourteen years, with a *toties quoties* covenant for renewal, demised for fourteen years, with a like covenant by an unregistered deed, and afterwards assigned his interest to a purchaser for value by a registered deed; it was held, that the purchaser,

(1) *Latch v. Bright*, 16, Gr. 653.

(2) *Davidson v. McKay*, 26 U. C. R., page 311, per Hagarty, J.

(3) *Drew vs. Lord Norbury*, 3, J. & L. 267.

having no notice of the unregistered deed, was not bound by the covenant to renew contained in it, as it was not a lease coming within the statutory exception (1).

Registration does not extend a lessee's covenant to renew beyond its original import.

It was decided under stat. 6, Anne, c. 2, that a lessee cannot maintain an action at law for breach of covenant for renewal contained in a registered lease, against the assignee of the reversion, as assignee of the covenants under a deed executed prior to the lease, but subsequently registered; the registration of the deed not extending the covenant therein beyond their original import (2). But it has been held, in a case under the Registry Act of New Brunswick, that a covenant to renew is not merely personal; that it relates to the land, and consequently binds the lessor's assignee (3).

III. Equitable Terms.

Equitable terms. Within meaning of the statute.

Equitable terms are within the statutory exception. In *Latch v. Bright* (4) it is said, "What the statute evidently meant to except was a term not exceeding twenty-one years, accompanied with possession; whether a legal or an equitable term could make no difference, either as affecting the purchaser, or as to the extent or value of the interest. If an equitable term is not within the exception, this anomaly will follow—that an equitable term for four years requires registration, while a legal term for twenty-one years does not. I see nothing in the act to exclude an equitable term from the exception, but much to lead to the conclusion that all interests, as well equitable as

(1) *Clark v. Armstrong*, 10 Ir., C. L. R., 263.

(2) *Chandos v. Brownlow*, 2 Ridg. P. C. 345.

(3) *Irvin v. Simonds*, 6 Allen (N.B.), 190; see *Drew v. Lord Norbury*, 3 J. & L., 267.

(4) 16 Gr., 653. See remarks of Burns J., page 85 *ante*.

legal, were intended to be placed upon the same footing" (1).

IV. Leases in futuro.

A lease *in futuro* does not come within the Act, as actual possession cannot go along with it. In *Latch v. Bright, Spragge, V.C.*, says "In the eye of the Court of Equity a term was created for eight years,—absolute for the first four, but defeasible upon a contingency at its expiration."

Lease *in futuro*
Not within the statute.

As actual possession cannot go along with it.

A tenant having possession under a current lease, which is his only title, cannot set up such possession as sustaining a lease for a term to commence *in futuro*, and thus bring it under the exception contained in the statute; for such possession cannot be said to "go along with the lease" under which no right of entry or possession has arisen (2). "The actual possession going along with the lease," can, I think, have only one meaning, and cannot extend to a lease to commence at a future day, under which no possession can as yet be going (3)."

Lease *in futuro*
cannot be protected by possession under a current lease.

V. Assignment of leases and effect of registration.

It has been doubted whether assignments of leases coming within the exception should not be registered (4). It was decided, under the Act 6, Anne, c. 20; s. 11, excepting leases under twenty-one years, if accompanied by actual possession, that an assignment of such a lease did not come within the exception, and must, therefore, be registered (5).

Assignment of leases under English and Irish Acts.
Assignment of lease with-in the exception are required to be registered.

Where a lease for less than twenty-one years was assigned by way of mortgage for a valuable

(1) *Ib.*, p. 655.

(2) *Davidson v. McKay*. 26 U. C. R., 306.

(3) *Ib.*, p. 311, per *Hagarty J.*

(4) *Fury v. Smith*, 1 *Hud. & Bro.*, II. app. 735.

(5) *Fleming v. Neville*, *Hayes*, 23.

consideration, the registry of the lease and the assignment was considered necessary under the English Act, the possession and occupation (mentioned conjointly in that Act) being severed (1).

But it has been held, under our Act, that where the original lease comes within the Statute, and does not, therefore, require registration, an assignment thereof need not be registered (2).

It has been decided in the Irish Courts that, although leases coming within the above section are exempt from registration, yet, if registered, they will not be excluded from the benefit of prior registration as against instruments subsequently registered (3), while the contrary opinion has been expressed by Burns J. in the case of *Doe d. Kingston B. S. v. Rainsford* (4), where he says, "Parties cannot, by their voluntary act of registry, in cases to which the act does not extend, draw to their acts the consequences provided by the legislature for another state of things (5).

The registration of an assignment of a lease, although the assignment recites the lease, does not amount to a proper registration of such lease (6), upon the principle that every deed under which a party claims must be registered, otherwise a purchaser cannot have notice of it.

Although a lease requiring registration under this section is neglected to be registered, whereby a subsequent instrument obtains priority, the lease

(1) *Rigge*, p. 88, *Bailey v. Fermor*, 9 Price, 262, *Blythwood's Conv.*, 3 Ed., Vol. 5, p. 510.

(2) *Doe d. Kingston, B. S., v. Rainsford*, 10 U. C. R., 241, per Burns J.

(3) *Talbot v. Gilmartin*, 3 Ir. Jur. O. S., 171. (*Lefroy B. dissentiente*).

(4) *Supra*.

(5) *Ib.*, p. 242.

(6) *Honeycomb v. Waldron*, 2 St., 1064. *Williams v. Sorell*, 4 Ves., 389.

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Recital in conveyance of reversion that same is subject to leases is notice thereof.

A. leased lands to plaintiff for twenty-one years, and afterwards conveyed the same lands *inter alia* to B. by deed, which recited that the "same was under lease to the plaintiff, which lease is not yet expired." B. conveyed the land to defendant. Both B.'s deed and the defendant's deed were registered before the lease to the plaintiff. Held, (a) that B. was only a purchaser of the reversionary interest in the premises demised, and the lease was therefore not void, as against him, under the Registry Act,—(b) that as B. was not a subsequent purchaser of the land leased, he could not, by conveying to the defendant, give him a better title than he, B., himself had,—(c) that though the lease would have been void, as against a subsequent purchaser from A. for value under a registered deed, A. could not, by conveying to a third person expressly subject to the lease, place such person in the same position as the law had placed A. as the general owner (1).

Possession of tenant is notice of his interest either as tenant or otherwise.

It has been held in England, that the possession of a tenant, even of part of the estate, is notice to a purchaser of the actual interest he may have, either as tenant, or further, by an agreement to purchase (2). But such possession will not be notice in this Province (3).

Definition of actual possession going along with the lease. Possession must be "actual." Not "nominal" or "constructive."

VII. Nature of the phrase "actual possession going along with the lease."

The "possession," within the meaning of the Act, must be "actual" as distinguished from "nominal" or "constructive." A possession by receipt of rent is not an actual possession, and

(1) *Downes v. Gordon*, 5 Allen (N. B.), 174; See *Rice v. O'Conor*, 11 Ir. Ch. Rep., 510 app.; also 12 Ir. Ch. R., 424.

(2) *Daniels v. Davidson*, 16 Ves., 249; *Powell v. Dillon*, 2 Ball and B., 416; *Crofton v. Ormsby*, 2 Sch. & Lef., 582.

(3) See notes to Section 74, *post*.

therefore not within the statute (1). The exception does not apply to cases of mere legal possession by receipt of rents, but to such a possession only as is accompanied by a *de facto* possession, because the object of the Act being to guard against secret conveyances, a visible occupation is not within the mischief, but is a substitute for registration; whereas legal possession only, may be entirely unknown (2). It has been held that it must amount to such an occupation of the land and premises as the head of a family usually enjoys (3). It should be notorious (4).

VIII. When lessee should be in possession.

To bring a lease within the exception of the Act, 26, Geo. III. (New Brunswick Statutes), cap. 1, s. 18, (and containing a similar exception in favor of leases under three years if accompanied by actual possession and occupation), it is not necessary that the execution of the lease and the taking possession of the land should be exactly concurrent acts (5). Chipman, C. J., in his judgment, observes, "I think the view taken of this point by the learned judge at the trial was undoubtedly correct, namely, that it was a matter for the jury to determine whether, in fact, the possession had gone with the lease, and that it was sufficient to satisfy the Act if possession followed the execution of the lease within a reasonable time. If it were held that the execution of the lease and the taking of the possession under it should be absolutely at the same instant of time, it is obvious

(1) *Fury v. Smith*, 1 Hud. & Brook, 2 app. 735.

(2) *Suggden V. & P.*, 11 Ed., 98.

(3) *Doe d. Kingston, B. S., v. Rainsford*, 10, U. C. R., 204.

(4) *Sutherland v. Walker*, 1 Kerr (N.B.), 141, per Chipman, C. J.

(5) *Sutherland vs. Walker*, 1 Kerr (N. B.), 141.

possession should be continued. If A., a tenant to B. under an unregistered lease for a term less than seven years, and in actual possession of the demised premises, should during the term discontinue such actual possession, while continuing to pay rent to B., it is submitted that B. could convey the premises to C. as a purchaser for value without notice of A's tenancy, and that in that case C., by registering his deed, could retain priority over A.

Quere, would an unregistered lease for a term exceeding seven years be postponed against a subsequent registered instrument for the first seven years, provided actual possession always went along with such lease? It is submitted that it could not prevail against a party claiming under a subsequent registered instrument, without notice of such lease, as the latter clause of the section makes express mention of leases for a longer term than seven years, whether the actual possession goes along thereunder or not. As to such leases it is provided in express terms, that the Registry Act shall apply; and therefore, a lease for a term exceeding seven years will, if not registered, be postponed to such subsequent registered instrument, notwithstanding actual possession may have always accompanied such lease.

Whether possession goes along with the lease or not.

CHAPTER VII.

PROOF FOR REGISTRATION.

- §38. Facts to be proved. Form of affidavit.
- §39. Affidavit to be registered.
- §40. When different witnesses see different grantors execute.
- §41. Certain defects in affidavit not to invalidate registration.
- §42. Deeds may be registered notwithstanding Christian name of witnesses not set forth.
- §43. Before whom to be sworn. in Ontario, in Quebec, in United Kingdom, in a British Colony, in a Foreign Country.
- §44. Witnesses compellable to make affidavit.
- §45. Affirmation of declaration.
- §46. Parties not to take affidavit. Witness to sign.
- §47. Witnesses insane, absent, etc.
- §48. Seal of Court or seal of Corporation with signature of officer to suffice for registration.
- §49. Certificates in Chancery for registry. Who may sign.
- §50. Registrar to deliver certified copy of power of Attorney registered.
- §51. Use and effect of such certified copy.
- §52. To be *prima facie* evidence. Rev. Stat., c. 62, s. 46.
- §53. Registry of instrument in several Registry Offices.
- §54. Registration of notarial copies of instruments executed in Quebec.

Facts to be proved. 38. In the case of an instrument other than a will, grant from the Crown, Order in Council, by-law or other instrument under the seal of any Corporation, or certificate of judicial proceedings, a subscribing witness to such instrument shall in an affidavit setting forth his name, place of residence, and addition, occupation or calling, in full, swear to the following facts:

- (a.) To the execution of the original and duplicate if any there be;
- (b.) To the place of execution;
- (c.) That he knew the parties to such instrument, if such be the fact; or that he knew such one or more of them, according to the fact;
- (d.) That he is subscribing witness thereto.

2. The affidavit may be in the form of Schedule E to this Act or to the like effect. 31 V., c. 20, s. 38.

The provisions of this section as to affidavit of proof are directory, not mandatory (1).

Proof required to In every system of registration proof, more or

- (1) Reid v. Whitehead, 10 Gr., 446. McDonnell v. Murphy, 2 J. & S., 304 (n).

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less minute, has been made an ingredient in the act of registration, for the purpose of authenticating and establishing the genuineness of the instrument proposed to be placed on record, as well as of affording facilities for the detection of fraud, in case the instrument should prove not to be genuine.

The provisions of the present Act are taken from the Registry Acts of 1865 and 1868, and are more complete and satisfactory than those in force prior to those statutes, and which are hereafter noticed in their proper place.

For the necessary proof for the registration of a will (1), grant from the Crown (2), Order in Council, By-law, or other instrument under the seal of any corporation (3), and certificate of judicial proceedings (4), the reader is directed to the several sections of this Act relating thereto, and referred to in the notes *infra*.

The word "shall" renders it imperative upon the subscribing witness to make the required affidavit (5), his refusal or neglect to comply being section forty-four *post*.

The object to be attained in requiring the name, place of residence, and addition of the attesting witness to be set forth, is obviously for the purpose of identification. It will be evident that, although by the language of the section the affidavit should set forth the name, etc., of the witness, he is not required to swear to these facts, as was the case under the Act of 1865 (6). The addition of a deponent is

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- (1) Sec. 63.
- (2) Sec. 61.
- (3) Sec. 62 & 73.
- (4) Secs. 48 & 49.
- (5) R. S. (Ont.), cap. 1, s. 8, ss. 2.
- (6) See 39.

Addition is descriptive only. 1. The execution of a deed is not a mere statement of fact.

With reference to the execution of a deed, the Act requires the presence of witnesses to the execution of the original instrument, and the execution of a copy thereof.

The execution of a deed is not a mere statement of fact, but it is a statement of fact which gives effect to the intention of the grantor. Execution by the grantor is not necessary to the validity of a deed, but it is necessary to the grantor's intention to transfer under such instrument, and it is to such transfer being implied. It is necessary that the execution meant by the Act is intended on the part of the grantor.

The witness to the execution of a deed should be the witness to the execution of the party from whom the estate moves. 2. The grantor's execution is the real execution and the witness to his execution must attest the same.

The practice under the English Registry Act has been to permit the witness to the execution by either party to make the necessary affidavit accompanying the memorial. 3. It has been held under the Irish Registry Act that where the affidavit does not prove the execution by the owner, it is defective in substance. 4.

The language of the fourth section *post*, bears out the view that the execution by the grantor is the execution required by the Act. Although a deed in some cases may be valid without the signature of the grantor, it cannot be received for

(1) *Hood v. Hood*, 10 Q. B. 270.

(2) *Sutton v. Sutton*, 10 Q. B. 270. See also *Reid v. Reid*, 24 L. J. Q. B. 270. See also *Reid v. Reid*, 24 L. J. Q. B. 270.

(3) *Fisher on Mortgages*, 2d ed. p. 45.

(4) *9 Bethwood's Cont. & Ex. p. 450*. See also *Reid v. Reid*, p. 74.

(5) *In re Stephens*, 11 Q. B. 270.

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registration of the Act without such signature. ^{Deeds, unless signed, cannot be registered.} The form of the deed in Schedule E, expressly mentions the "signing and sealing" upon the part of the grantor. In other words, deeds without signature are not valid for registration purposes.

It is ^{affidavit should follow the form prescribed.} held that the words "signed, sealed and delivered" which appear in the affidavit, and that a witness that the witness saw the deed "executed" only, without more, is insufficient, and that such an affidavit cannot be received. When the words of our Act are precise and unambiguous, they must be expounded in their natural and ordinary sense (1).

The sixth section of the Act 26. Geo. III., (New Brunswick), required the execution of deeds proposed to be registered, to be proved by the subscribing witness, who should, upon oath, prove "the signing, sealing and delivery" thereof. Held, that proof by the subscribing witness that he saw the grantor "sign, seal and make their marks thereto for the purposes therein contained" was insufficient, and a deed with a memorandum of this proof endorsed upon it was improperly registered (2). In his judgment in this case Ritchie C. J., remarks:—The Registrar has no right to draw any inference, or accept or act on any other evidence in substitution of that directed by the statute, and until the legal evidence so required is furnished and acted on by the proper officer, the deed cannot properly be recorded."

(b.) Place of execution.

Prior to the Registry Act of 1846 (3) it was not

(1) Gaudet v. Brown, L. R. 5 P. C., p. 153. See V. C. sary under Esten's remarks in Rees v. Wainwright, 10 Gr., 443.
(2) Doe d. Catherine v. Burnell, 3 Piesley, 74.
(3) Sec. 10.

Reg. Act
of 1793.
Place of
execution
should be
deposed
to.

To assist
the Regis-
trar.

To facili-
tate en-
quiry as to
fact of
execution.

Registrar
cannot re-
ceive in-
strument
if place of
execution
omitted

Knowl-
edge of the
parties
executing
writing.

Affidavit
must state
that wit-
ness knew
one or

incumbent to state in the affidavit where the deed was executed. The place of execution must now also be designated. It is important that the place where the instrument is executed should be mentioned in the affidavit in order; First—that as the nature of the proof varies according to the locality where the instrument purports to be executed, it will enable the Registrar to ascertain whether the requirements of the Act have been duly complied with: such as that the affidavit of execution is taken before the authorized officer. “The mention of the place of execution is, I think, intended to enable the Registrar to judge of the nature of the proof required in that particular case, and which is different according as the instrument is executed in or out of Upper Canada” (1). Secondly—that should the fact of the execution of the instrument be disputed, parties interested will be facilitated in pursuing their enquiries upon the subject.

It is clear that in the absence of any such statement in the affidavit, the Registrar cannot receive or register the instrument to which it relates.

Where a Registrar recorded a certificate of discharge of mortgage upon an affidavit which did not state the place of execution, as required by the statute, it was held, that he should have refused to register it, and that by registering “he failed in the strict and proper discharge of his duty” (2).

(c.) Knowledge of the parties executing instrument.

The affidavit must state, in the third place, that the attesting witness knew the parties to such instrument, *if such be the fact*, or that he knew such one or more of them *according to the fact*.

(1) Magrath v. Todd, 26 U. C. R., 87.

(2) Per Esten, V. C., Reid v. Whitehead, 10 Gr., p. 449.

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Taking this subsection in connection with the form of the affidavit in Schedule E., a doubt has been expressed whether the witness must have known least one of the parties, or not. The language of the subsection does not help one out of the difficulty, as the first clause requires him to state that he knew the parties, *i. e.*, all the parties, *if such be the fact*. Now if such should not be the fact, then what? The attestation contained in the concluding clause, is "or that he knew such *one or more* of them," according to *the fact*. Does this infer that he must say that he knew one of the parties, and also more of them, if the fact be that he knows more? Or does it mean, in case such be the fact, that he does not know any of the parties, that he should state that absence of knowledge in the affidavit?

Reference to the third clause in the form of the affidavit will not assist us in the solution of this doubt, as it requires the witness to state that he knows the parties (or one or more of them *according to the fact*), the words "according to the fact" applying equally to "parties" and "one or more of them."

Can then an affidavit of execution be held to be in accordance with the statute, and be receivable by the Registrar which contains a statement by the witness that he does not know any of the parties?

It is submitted that such an affidavit is invalid and cannot be registered, upon the ground that the main object in requiring an affidavit to prove the execution of an instrument for registration purposes is to establish the authenticity of the execution of such instrument, and to show, not only that it is a genuine document, but that it is

more of parties executing.

Ambiguity of third clause in affidavit.

And in form Schedule E.

Affidavit invalid unless witness deposes that he knows at least one of the grantors.

Or party
from es-
tate
moves.

the act of the grantor, or person from whom the estate or interest moves. How then can it be said that the object of the statute is attained, when the only guarantee to satisfy the Registrar and the public that the instrument is authentic, and is really the act and deed of the grantor, or person from whom the estate or interest moves, is the affidavit of a person who admits therein that he does not know such grantor or person, but who states in a previous clause of the affidavit that he "was personally present and did see" the within instrument duly signed, sealed and executed by the parties to the instrument and whom therefore he cannot rightly and properly say were the proper parties or not?

Degree of
knowl-
edge.

It is not too much to demand that the witness to the execution of an instrument should be to some extent, at least, acquainted with the parties who execute in his presence; especially in the case of such important instruments as those affecting the title to land, so that he may be able to testify to the Court when necessary. What degree of knowledge or acquaintance the witness should have is not stated and could not be laid down. It is presumed that a slight knowledge on the part of the witness is sufficient. It need not necessarily be personal.

Need not
be per-
sonal.

Witness
must
swear to
knowledge
of grant-
or under
New York
Reg. Law.

Under the Registry Law of the State of New York the affidavit of execution must show that the witness knew the grantor, otherwise the proof is insufficient (1).

On examining the original bill upon which the Registry Act of 1865 was founded, it will be noticed that it contained two clauses bearing directly upon

(1) *Jackson v. Gould*, 7 Wend. (N. Y.), 364; *Jackson v. Osborn*, 2 Wend (N. Y.), 555.

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tending to pervert the simple and effectual mode of proof established by the statute into a convenient declaration of matters affecting the title, more properly appertaining to the practice of a conveyancer.

Technical objections to the affidavit will not prevail.

Substantial compliance with statute is sufficient.

The Courts will not notice technical objections to an affidavit which is required to be made under a statute; such as the present, especially where such objections are founded upon a non-compliance with certain Rules of Court, established for the regulation of the practice and proceedings in such Court. It will be sufficient if such affidavit fully and plainly complies with what is substantially required by the statute affecting such affidavit (1).

Affidavit to be registered.

39. The said affidavit shall be made on the said instrument, or securely attached thereto, and such instrument and affidavit shall be copied at full length in the Registry Book. 31 V., c. 20, s. 39.

Under Reg. Act of 1865 affidavit could not be annexed.

Under the Registry Act of 1865 (2) the affidavit was required to be made on the instrument, no provision being made for it being annexed to it, as in this section. It need not be made on a duplicate of the instrument as the affidavit forms no part of the instrument. Requiring the affidavit to be copied in full in the Registry affords the party examining the instrument an opportunity of ascertaining if the former is in compliance with the Act, and at the same time perpetuates the evidence of execution.

Benefit of having affidavit copied in full in Registry Book.

When different witnesses see different grantors execute.

40. Where any instrument is executed by one or more grantors, but not by all of them, in presence of the same witness or witnesses, and by one or more of the other parties thereto, in presence of another witness or other witnesses, then and in such case, the witness or one of the witnesses, whether the same be so executed in the same or in different places, shall make an affidavit, in accordance with the thirty-eighth section, as to each separate and distinct execution of the instrument before the same is registered. 31, V. c. 20, s. 40.

(1) *Moyer v. Davidson*, 7 U. C. P., 521. See *De Forrest v. Burnell*, 15 U. C. R., 370.

(2) See 40.

This section confirms the proposition contained in the remarks upon section thirty-eight *ante*, in reference to the affidavit of execution, viz., that it must shew an execution on the part of the grantor, or the person from whom the estate or interest moves, in requiring that, when the instrument is executed by more than one grantor before separate witnesses, each witness must make affidavit as to the party executing in his presence. It is to be remarked that the Registrar is here expressly, as he is impliedly by the thirty-eighth section *ante*, prohibited from registering the instrument until this is complied with.

Section supports the view that the execution to be attested to is that of grantor, &c.

Registrar prohibited from registering.

41. No registration, under this Act, of any instrument shall be deemed or adjudged void, or defective by reason of the name, place of residence, addition, occupation or calling of the subscribing witness thereto not being set forth in full, or being improperly or insufficiently given or described in the affidavit mentioned in and required by section thirty-eight, nor by reason of any clerical error or omission of a merely formal or technical character in such affidavit. 36, V. c. 17, s. 3.

Certain defects in affidavit not to invalidate registration.

Section 38 *ante*, requires that the name, place of residence, addition, occupation or calling of the subscribing witness shall be set forth *in full* in the affidavit of execution. The present section, introduced by the Act, 36 Vic., c. 17, however, qualifies sec. 38 by enacting that the absence of such full details, or the improper or insufficient compliance of the particulars required by that section, or any clerical error or omission in the affidavit shall not affect the validity of registration. It has always been held that clerical errors or mere formal omissions shall not vitiate registration (1). The effect of this section is to confirm the validity of the registration of any instrument coming within its operation, but by section 78, *post*, the Registrar is expressly enjoined not to register any instrument except upon the proof

(1) Wyatt v. Barwell, 19 Ves., 435.

Or, before any Justice of the Peace for the County in which such affidavit is sworn—39 V., c. 25, s. 8.

2. If made in Quebec, it shall be made before—

In Quebec.

A Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court;

Or, before a Commissioner authorized under the laws of Ontario to take, in Quebec, affidavits in and for any of the Courts of Record in the Province of Ontario;

Or, before any Notary Public in Quebec, certified under his official seal—31 V., c. 20, s. 41 (2); 34 V., c. 14, ss. 2 & 6; C. S. C., c. 79, s. 3.

3. If made in Great Britain or Ireland, it shall be made before—

In United Kingdom.

A Judge of the Supreme Court of Judicature in England, or of the Court of Session or the Justiciary Court in Scotland, or of the High Court of Chancery, or of the Court of Queen's Bench, Common Pleas, or Exchequer, in Ireland;

Or, before a Judge of any of the County Courts within his County;

Or, before the Mayor or Chief Magistrate of any City, Borough or Town corporate therein, and certified under the common seal of such City, Borough or Town Corporate;

Or, before a Commissioner authorized to administer oaths in the Supreme Court of Judicature in England, or before a Commissioner authorized by the laws of Ontario to take, in Great Britain or Ireland, affidavits in and for any of the Courts of Record in the Province of Ontario;

Or, before any Notary Public certified under his official seal—31 V., c. 20, s. 41 (3); 34 V., c. 14, ss. 2, 4 & 6; 40 V., c. 7, Sched. A (126);

4. If made in any British Colony or Possession, it shall be made before—

In a British Colony.

A Judge of a Court of Record, or of any Court of Supreme Jurisdiction in the Colony;

Or, before the Mayor of any City, Borough or Town Corporate, and certified under the common seal of such City, Borough or Town;

Or, before any Notary Public, certified under his official seal;

Or, if made in the British Possessions in India, before any Magistrate or Collector, certified to have been such under the hand of the Governor of such Possession;

Or, before a Commissioner authorized by the laws of Ontario to take, in such British Colony or Possession, affidavits in and for any of the Superior Courts of the Province of Ontario—31 V., c. 20, s. 41 (4); 34 V., c. 14, ss. 2, 4 & 6;

5. If made in any Foreign Country, it shall be made before— In a Foreign Country.
The Mayor of any City, Borough, or Town Corporate of Foreign Country, and certified under the common seal of such City, Borough, or Town Corporate;

Or, before any Consul, Vice Consul, or Consular Agent of Her Majesty, resident therein;

Or, before a Judge of a Court of Record, or a Notary Public, certified under his official seal;

Or, before a Commissioner authorized by the laws of Ontario to take, in such country, affidavits in and for any of the Courts of Record of the Province of Ontario—31 V., c. 20, s. 41 (5); 34 V., c. 14, ss. 2, 4 & 6.

Interpre-
tation of
word "Affi-
davit,"

Under
Reg. Act of
1795 affi-
davits
were
sworn be-
fore the
Registrar
or Deputy.
Provisions
of Reg.
Act of
1846.

The word "affidavit" includes "affirmation" and "declaration" (1).

Originally all affidavits had to be made before the Registrar or his Deputy, and for that purpose the witnesses had to attend at his office.

The Registry Act of 1846 relieved witnesses from the necessity of attending at the Registry Office, and permitted the affidavit to be taken as well before a Judge of the Superior or County (then called District) Courts or a Commissioner for taking affidavits, as before the Registrar or his Deputy.

39 Vic., c.
25 (Ont.)

Much inconvenience being experienced in many portions of the Province, principally in those sections lying at a distance from towns and villages, from the want of Commissioners, it was enacted by 39 Vic., (O.) cap. 25, s. 3, that the affidavit, if made in Ontario, could be sworn before a Justice of the Peace for the County in which the affidavit might be sworn, in addition to those functionaries before referred to.

No pro-
vision for
regis-
tration of
Memorials
of instru-
ments exe-
cuted out
Province
under Reg.
Act of
1795.

The Registry Act of 1795 (2) provided that memorials of instruments executed out of the County wherein the lands laid could be registered upon affidavit of one of the witnesses to the instrument sworn before a Judge of the King's Bench or a Commissioner; but made no provision for the

(1) Sec. 45 post.

(2) Sec. 13.

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taking of the affidavit of witnesses to the memorial of an instrument executed out of the Province.

This, being found inconvenient, led to the passage of the Act 58, Geo. III., cap. 8, which, after reciting ^{58 Geo. 3,} that difficulties had arisen in cases where parties ^{cap. 8.} residing in Great Britain and Ireland, or in other colonies, executing any instrument or will which then had to obtain registration in this Province, provided (1), that such instrument could be registered upon an affidavit of execution sworn before the Mayor or Chief Magistrate of any City, Borough or Town corporate in Great Britain or Ireland, or the Chief Justice or Judge of the Supreme Court of any Colony.

The Registry Act of 1846 (2) permitted a declaration to be substituted for such affidavit in cases where, by law, a declaration was substituted therefor. It also required the Mayor or Chief Magistrate in any City, etc., in Great Britain or Ireland to attach the corporate seal of such City, etc., to the affidavit; extended the authority of taking such affidavits to the Chief Justice or Judge of any Court of Queen's Bench in Lower Canada, the Mayor of any City, Borough or Town Corporate in any foreign Country, or any Consul or Vice-Consul of Her Britannic Majesty therein. It was a condition precedent to the registration of an instrument upon an affidavit sworn abroad, that the instrument to which the memorial related should be certified by the official before whom such affidavit was sworn, as that referred to in the affidavit or affirmation.

Reg. Act
of 1846.

Extended
to foreign
countries.

Certificate
of party
taking
affidavit.

By 12 Vic., cap. 77, the Judges of the Courts of Queen's Bench and Common Pleas were empowered

Appoint-
ment of
Commis-

- (1) Sec. 2.
(2) Sec. 10.

sioners
out of
Province
12 Vic.,
c. 77.

to appoint such persons in Lower Canada as they deemed proper to be Commissioners for receiving affidavits in Lower Canada, to be used in the Courts in Upper Canada; and affidavits of execution of deeds, etc., sworn before such Commissioners were sufficient for registration purposes.

18 Vic.,
c. 127.

The 18 Vic., cap. 127, sec. 5, extended the power to take such affidavits to the Judge of the Equity and District Courts of Lower Canada.

26 Vic.,
c. 41.

The Governor in Council was authorized by 26 Vic., cap. 41, to appoint Commissioners for taking affidavits in the United Kingdom for use in Canada, and that Act further provided that affidavits taken before such Commissioner or Notary Public, Consul, Vice-Consul, Acting Consul, Pro-Consul, or Consular Agent in foreign countries, should be available for registration purposes. This Act was repealed by 34 Vic., cap. 14, which transferred the powers theretofore vested in the Governor in Council to the Lieutenant-Governor in Council, but contained similar clauses to those in the repealed Act.

Affidavits
taken
before
Notaries,
Mayors,
Chief
Magis-
trates and
must be
certified
to under
seal.

It will be observed that all affidavits taken before a Notary Public must not only be signed by him, but be also certified under his official seal; the same remark applying to affidavits taken before the Mayor or Chief Magistrate of a City, etc., who must certify under the common seal of such city. An acknowledgment of a deed made in Great Britain was in the following form:—"Be it remembered that on &c., before me, T. G., Mayor of the Town of Southampton, in England, personally appeared &c. &c. Given under my hand and seal the day and year first above written," and signed by the Mayor with a seal affixed, having the words

"Southampton Villa" inscribed around what appeared to be the City Arms; it was held, that the seal imported to be the corporate seal of the City of Southampton, and not the private seal and that therefore the acknowledgment was sufficient under Rev. Stat. (N. B.) c. 112. (1).

The provisions of this section as to affidavits of execution made out of Ontario are merely permissive, and do not interfere with the right to adopt the ordinary mode of proof, so that a deed executed out of Ontario may be proved here by the subscribing witness in the usual way (2).

The Registrar has no discretion to receive one mode of proof and reject another (3).

Registrar has no discretion to reject one of several modes of proof.

It is essential that the affidavit should be endorsed upon, or be annexed to, every duplicate. It is sufficient that it be endorsed upon or annexed to the instrument to be deposited with the Registrar. At the same time it is more prudent to have the affidavit upon all, especially when the instruments are to be executed and sworn to out of the Province, as the probability of at least one of the affidavits being properly signed and taken will be more certain.

Affidavit must be endorsed or annexed. Sufficient if on or attached to instrument deposited.

The party before whom the affidavit is sworn should properly style himself, so that the Registrar and others may ascertain if he be duly authorized. The practice of abbreviations is not safe or prudent. Where there was nothing to shew that an affidavit was sworn before a duly authorized officer, the Commissioner merely styling himself, "A Commissioner, &c." Held insufficient (4).

Party taking affidavit should be properly styled.

(1) *Re Veber v. Britain*, 4 All. 330.

(2) *Crockford v. Equitable Ins. Co.*, 5 Allen (N. B.), 651.

(3) *In re Registrar of York*, 3 U. C. R., 188.

(4) *Hirons v. the Municipal Council of Amherstburg*, 11 U. C. R., 458.

But where the certificate of acknowledgment, where the certificate of proof of execution of a deed was subscribed "Geo. D. Ludlow," without and description of his official character, either on the certificate, or annexed to his signature; it was held (*Carter J. dissentiente*) that the Court would take judicial notice that a person named George D. Ludlow was Chief Justice of the Province at the time the deed appeared to have been executed, and that it was competent for the Registrar to recognize the certificate as an authenticated act of the Chief Justice (1).

Affidavit
sworn
before a
witness.
Interline-
ation
should be
initialed,

An affidavit sworn by one of two witnesses before the other witness was held to be valid (2). Interlineations should be made by the person taking the affidavit, although the want of such initialing does not necessarily avoid the affidavit (3). It is not necessary in affidavits sworn under a statute to conform to the technicalities required by rules of Court (4). Nevertheless a close adherence to the recognized practice is always advisable. Where the jurat of an affidavit stated that it had been sworn upon a day which had not then arrived, it was held that the affidavit was a nullity (5). Forms of jurats adapted to affidavits sworn out of Ontario are given in Appendix A.

Though
not neces-
sarily.

Jurat.

Witnesses
compel-
lable to
make affi-
davit.

44. Every subscribing witness shall be compellable, when necessary, by order of a Judge of any of the Superior Courts or County Courts, to make affidavit or proof of the execution of any instrument for the purpose of registration under this Act, and to do all other Acts necessary for the same purpose, upon being paid or duly tendered his reasonable expenses therefor. 31 V., c. 20, s. 42.

- (1) *Watson v. Hay*, 3 Kerr. 359.
- (2) *Reid v. Whitehead*, 10 Gr. 446.
- (3) *Leeming v. Marshall*, 5 E. R. 276; *Lyster v. Boulton*, 5 U. C. R., 632.
- (4) *Moyer et al v. Davidson et al* 7 U. C. P., 521. See *De Forrest et al v. Bunnell*, 15 U. C. R., 370.
- (5) *In re Robertson*, 1 P. R. 122. See *Babcock v the Township of Bedford*, 8 U. C. P., 527.

The ninth section of the Registry Act of 1846^{Witness} enacted that every memorial of a deed should be^{compel-} attested by two witnesses, one of whom was to be^{lable} one of the witnesses to the execution of the deed,^{under} etc. "One whereof shall, upon oath, * * * prove^{Reg. Act} the signing and sealing of such memorial." This was^{of 1846.} construed as being imperative upon the witness to make the necessary affidavit: and in a case coming within this section, it was held, that a mandamus would lie to compel an unwilling witness to prove the execution of a deed and memorial for registry (1).

This section dispels all doubt upon the point by^{This sec-} rendering it compulsory upon such a witness to^{tion re-} make any affidavit or proof of the execution of the^{moves any} instrument for registration purposes, and to do^{doubt.} such other acts as may be necessary for that purpose, provided he is first paid or tendered his reasonable expenses therefor. In the event of his refusal to comply, an order of the Judge of the Superior or County Court can be at once obtained. It is presumed that the Court would require the same fees to be paid or tendered as those payable to a witness in a suit or civil proceeding.

It will be noticed that this section speaks only of "a subscribing witness." If a grantor should execute the instrument in the presence of a person who consents to act as witness, but afterwards refuses or neglects to subscribe his name, could he, being a witness, though not "a subscribing witness," be compelled to do so, if the grantor, relying upon the assent of the person, had departed from the country and could not be easily reached, in order to obtain a re-execution of the instrument? It is conceived that upon the facts being

Witness
compel-
lable
under
Reg. Act
of 1846.

Mandamus would be under that Act.

This section removes any doubt.

Fees must be tendered;

Similar to those allowed witnesses in civil proceedings.

Must he be a "subscribing witness?"

(1) Reg. v. O'Meara, 15 U. C. R., 201.

Court
would
compel
witness to
subscribe
as such

shown to the satisfaction of the Court, and it being proved that the person was paid, or tendered his expenses, the Court would order such person to subscribe his name as witness to the instrument; on the ground that by such consent to act he agreed to fulfil the duties appertaining to a witness, and by such conduct had caused the parties to the instrument to place themselves in a worse position than they would have occupied but for his neglect or refusal.

Penalty
for dis-
obedience

The penalty for disobedience to the order is an attachment for contempt (1).

For form of affidavit and of Judge's order see appendix A.

Affirma-
tion or
declara-
tion in
certain
cases.

15. The proof may be either by affidavit, or by affirmation or declaration, when by the law of the country where such proof is made, an affirmation or declaration may be substituted for an affidavit; and the Registrar shall receive such instruments so proved without any other or further proof of their due execution. *Reg. Act, c. 20, s. 43.*

Imp. Act
5 & 6
Wm. 4,
c. 62, not
applicable
to this
Province

Prior to the statute permitting declaration or affirmation, the proof of a deed executed in England and having been made under the Imperial Statute 5 & 6 Wm. IV., c. 62, substituting declarations for affidavits, and such deed being presented for registration in this Province, the Registrar refused to receive it. A mandamus to compel him to register the deed in question was refused, on the ground that the Imperial Act did not apply to the case (2).

Confined
to instru-
ment exe-
cuted out-
of Pro-
vince by
Reg. Act
of 1846

By the Registry Act of 1846 (3) proof by declaration or affirmation was confined to cases where the instrument was executed out of Upper Canada.

(1) *Swaine et al. v Stone*, 4 M. & S., 584; *Black v. Lowe*, 4 D. & L., 285; *Ham v. Ham*, 3 O. S., 176; *Regina v. Allen*, 5 P. R., 463.

(2) *In re. Lyons*, 6 O. S., 627.

(3) Sec. 10.

Since the Registry Act of 1865 this distinction has been abolished (1).

The provision that affirmation or declaration may be substituted when it may be so substituted "by the law of the country where such proof is made" involves the question whether such substitution can be made in Ontario, and if so, in what cases.

The 49 Geo. III., c. 6, after reciting that the Menonists and Tunkers, from conscientious scruples against taking oaths, were subject to much inconvenience, not only to themselves and their families, but also to others requiring their evidence, enacted that upon every occasion that an oath was required, or an affirmation by a Quaker was allowed, every Menonist and Tunker could make the declaration or affirmation mentioned in the Act; and that such permission was to remain perpetual and impliedly contained in every law thereafter to be enacted, relating to evidence or the requirement of oaths. This permission to substitute affirmations, &c., for oaths was subsequently extended to matters connected with criminal proceedings, and Moravians were included in the exception (2).

These statutes were incorporated in C. S. U. C., cap. 32 (3), and are now included in "The Evidence Act" (4). It would appear, therefore, that members of the religious societies referred to are at liberty to make affirmations or declarations of execution for registration purposes.

The statute, 34 Vic., cap. 14, having stated in the preamble thereto that, "whereas it is expedient

Distinction abolished by Reg. Act of 1865.

In what cases by affirmation or declaration may be made here.

49 Geo. 3, c. 6.

Menonists and Tunkers.

Moravians.

C. S. U. C. cap. 3, 2.

Under 34 Vic., cap. 14,

(4) Sec 44.

(1) 10 Geo. IV., c. 1.

(2) Sec. 1.

(3) R. S. Ont., c. 62, s. 12.

those to
whose re-
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lief taking
an oath is
contrary,
may affirm
or declare.

ent to permit any person who declares that the taking of any oath is contrary to his religious belief to make instead of such oath, a solemn affirmation or declaration in all cases where an oath may be lawfully administered, proceeds to enact that any person "required or desiring to make an affidavit or deposition in any civil proceeding, or on any occasion other than a criminal proceeding wherein, or touching any matter respecting which an oath is now, or may hereafter be requisite by law, it shall be lawful for the Court or Judge, or other presiding officer or person qualified to take affidavits or depositions to permit such person instead of being sworn to have his or her solemn affirmation or declaration" in the form provided for by that Act; such declaration or affirmation being declared to have the same force and effect as if such person had taken an oath in the usual form.

Forms of
affirma-
tion and
declara-
tion must
adhere to
the sever-
al stat-
utes appli-
cable.

From a consideration of the foregoing enactment, and reading it in connection with the preamble, it is impossible to avoid the conclusion that the same privilege is intended to be afforded by the legislature to others who solemnly declare that the taking of an oath is contrary to their religious belief, as has been granted to members of the Quakers, Mennonists, Tunkers and Moravians, and that the former are equally entitled to make affirmation or declaration in lieu of affidavit. It is necessary, however, that the forms of declaration or affirmation adopted by the several statutes should be strictly adhered to, otherwise the affirmation or declaration cannot be received.

In the case of *Hillborn v. Mills* (1), an affirma-

(1) 5 L. J. N. S. 41, but see contra, *Wolsely v. Worthington*, 13 I. C. R., 341, also 24 I. C. R., 369.

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40. No
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tion by a Quaker, commenced as follows: "I. W. S. H, of, etc., do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers," and then proceeded with the subject matter of the affidavit; it was held not to be in compliance with the C. S. U. C., c. 32, s. 1.

The "Act for the suppression of Voluntary and Extra-judicial Oaths" (1), passed expressly for the purpose of suppressing the then prevailing practice of administering oaths and affidavits, voluntarily taken and made in matters without the subject of judicial enquiry, prohibited the taking of such oaths, and required an affirmation in the form of the schedule thereto. A proviso is contained in that Act to the effect that it "shall be lawful for any Judge, Justice of the Peace, Notary Public, or other functionary authorized by law, to administer an oath, to receive the solemn declaration of any person voluntarily making the same before him in the form of the schedule to this Act annexed in attestation of the execution of any written deed or instrument."

It has been thought by some that this enactment conferred the power to substitute affirmations for affidavits of execution for registration purposes; but, independently of an express proviso contained in the enactment to the effect that nothing in the Act should be construed as extending to any matter lying within the jurisdiction of the several Provinces, it is clear that the Act cannot affect the question of proof under our Registry Law, as such cases are solely within the jurisdiction of the Provincial Legislature.

46. None of the persons authorized to take affidavits by this Parties Act, shall take any affidavit of the execution of any instrument, not to in case he is a party to such instrument; nor shall any such take affidavits.

(1) 37 Vic. (D), cap. 37.

Declarations
under
37 Vic.,
cap. 37
(D.)

Does not
apply to
proof for
registry
under our
Registry
Act.

Witness
to sign.

affidavit for the proof of any instrument executed after the first day of January, one thousand eight hundred and sixty-six, be taken from any witness, unless such witness has subscribed his name in his own handwriting as such witness, 31 V., c. 20, s. 44.

Prohibi-
tion as to
taking
affidavits
before
parties to
the instru-
ment an-
alogous to
practice of
the
Courts.

In analogy to the practice of the Courts, which does not permit an affidavit sworn before the attorney in the cause, his clerk or agent, to be read in proceedings before such Courts, the Act very properly prohibits any party to the instrument to take any affidavit of execution, though he may come within the description of those mentioned in section forty-one *ante*, who are authorized to administer the affidavits of execution. This is according to the well established maxim lying at the root of our administrative justice, "*Aliquis non debet esse judex in propria causa, quia non potest esse judex et pars*" (1).

Does not
extend to
witnesses.

The prohibition, however, does not extend to the witnesses to an instrument, and therefore when the affidavit of execution made by one of the subscribing witnesses to a memorial was sworn before the other subscribing witness, an objection raised to the validity of the affidavit upon that ground was over-ruled (2).

Witnesses
to instru-
ments ex-
ecuted
after Jan.
1st, 1866,
must be
literate.

From the latter clause of this section it is clear that all witnesses must now be literate, and that a marksman is an incompetent witness for the purpose of proving execution of an instrument under the Registry Law. As it applies only to the case of instruments enacted subsequent to 1st January, 1866, it would appear that a Registrar is bound to accept the affidavit of proof of any instrument, executed prior to this date, though hereafter to be registered, made by a witness unable to write. It will be noticed that the witness must subscribe his

Latter
part of
section
prospective
only.

(1) Co., Litt. 141, a.

(2) Reid v. Whitehead, 10 Grant, 446.

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name as witness to the execution of the instrument before his affidavit can be taken.

47. Where the witnesses to any instrument are dead, or are out of this Province, or have become insane, idiotic, imbecile, or of unsound mind or understanding, and whether so found by inquisition or not, or wherever any instrument, not by law requiring an attesting or subscribing witness thereto, has been executed without any attesting or subscribing witness thereto, or in case it is proved to the satisfaction of the Judge in this section mentioned, that the place of abode or residence of such first above mentioned witnesses is unknown, any person who is or claims to be interested in the registration of the instrument, may make proof before the Judge of any County Court in Ontario, of the execution of such instrument, and upon a certificate (according to the form of schedule F to this Act), endorsed on such instrument, and signed by such Judge, that the Judge is satisfied by the proof adduced of the due execution of the instrument, the Registrar shall register such instrument and certificate. 31 V., c. 20, s. 45; 36 V., c. 17, s. 1; 39 V., c. 25, s. 5.

Witnesses
insane,
absent,
etc.

This section is loosely drawn. As an illustration of this the section declares that where the witness to an instrument requiring registration is dead, the certificate of the Judge can be obtained on proving to the latter's satisfaction that the place of abode or residence of such deceased witness is unknown. No provision is made for obtaining the certificate where the witness becomes blind after witnessing the instrument.

There being no provision made in the Registry Act of 1795, for the proof of instruments in the case of death, absence, etc., of the witnesses thereto, the omission was supplied in the Registry Act of 1846 (1), which enacted that in case the witness should be dead or permanently resident out of the Province, it should be lawful for the grantee his heirs, executors, administrators, guardians, trustees, or assigns, to make proof before the Justices of the Peace in General Quarter Sessions Assembled, of the execution of the instrument, and upon a certificate signed by the Chairman, and certified by the Clerk of the Peace, to the effect that a

No similar
provision
in Reg.
Act of
1795.

Under
Reg. Act
of 1846.

Proof
made be-
fore Jus-
tices in
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Certifi-
cate.

(1) Sec 11—C. S. U. C., c. 89, 5, 27.

Usually
endorsed
in the in-
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Present
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introduc-
ed by Reg.
Act of
1865.

Proof may
be made
before the
Judge of
any
County
Court.

The Judge
was re-
quired to
sign cer-
tificate in
presence
of County
Court
Clerk.

majority of the Magistrates present in such session assembled were satisfied by the proof adduced, the Registrar should register the instrument. Although the Act did not require that the certificate should be endorsed upon the instrument, it nevertheless was always done in practice. This provision remained unaltered until the Registry Act of 1865. As it is probable that instruments executed prior to the Registry Act of 1865, and proof of the execution of which had been made under the eleventh section of the Registry Act of 1846, may be hereafter brought to the Registry Office for registration, the form of the certificate generally in use under that section will be found in the Appendix A. The method adopted by the Registry Act of 1846, proving too cumbersome, expensive, and dilatory, it was abolished in the Registry Act of 1865 (1), and proof allowed to be made before the Judge of any County Court.

The distinction in the nature of the absence of witnesses, namely, as to its being permanent, or temporary was also done away with. The authority granted to adduce proof was extended to any who was or claimed to be interested in the registration of the instrument. The certificate of the Judge, a form for which was provided, was required to be signed by him and endorsed upon the instrument.

By the form of the certificate referred to in the Act the Judge was required to sign it in the presence of the Clerk of the County Court, who should sign his name as such witness, and affix the seal of the Court thereto. The provisions of the Registry Act of 1865, were re-enacted in the Registry Act of 1868. The power of applying to the Judge of the County Court for such a certificate, was further

(1) Sec. 46.

extended by the Act, 36 Vic., cap. 17, (1), to the cases where the witnesses "have become or are insane, idiotic, imbecile, or of unsound mind or understanding, and whether so found by inquisition or not, or whenever any instrument, not by law requiring an attesting or subscribing witness thereto, has been executed without any attesting or subscribing witness thereto, or in case it is proved to the satisfaction of the Judge * * * that the place of abode or residence of such first above mentioned witness is unknown."

The form of the certificate was subsequently amended (2), by dispensing with the same being signed in the presence of the Clerk of the County Court; and it was provided that it should not be necessary that the signature should be witnessed by the Clerk or by the Clerk or any other person, or that the seal of the Court should be attached thereto.

The section of the Registry Act of 1868, as amended has been included in the section under consideration. The allusion contained therein as follows, "or whenever any instrument not by law requiring an attesting or subscribing witness thereto, has been executed without any attesting or subscribing witness" is evidently for the purpose of excluding from the operation of this section, the registration of any instrument which has been executed without any attesting witness, but the validity of which instrument depends upon an attesting witness thereto. A will executed in the presence of only one witness could not, therefore, be registered under this Act, not coming within the definition referred to in this section.

The phrase "any person who is, or claims to be

- (1) Sec. 1.
- (2) 39 V., c. 25, s. 5.

Who should assign and affix the Court seal.

Reg. Act of 1868.

Power of latter Act, extended by 39 Vic., c. 25.

By 39 Vic., c. 25, the necessity for signature to be witnessed by the Clerk or for the seal of the Court to be attached was abolished.

Instrument not required by law to be witnessed.

Who may be the applicant.

Re-execution held inoperative in England.

Otherwise under our Act endorsement of certificate.

Should be upon the instrument which is to be deposited.

Expediency of filing in Registry Office, the affidavit in which certificate based.

Should be annexed to instrument deposited.

Seal of Court or seal of corporation with signature of officer to suffice for registration.

interested in the registration of the instrument," will, of course, include the grantor, the vendor, and all persons claiming by, through or under him (1).

It has been held, under the English and Irish Registry Acts, that where the witnesses are dead or absent, a re-execution, in the presence of a new witness, for the purpose of registry, would be inoperative (2); but there seems to be no reason why such a course should not be valid here. According to the section, the certificate should be endorsed upon the instrument, while on the other hand the form of the certificate as contained in Schedule F., contemplates the endorsement of the certificate upon either the instrument itself, or upon a duplicate memorial or copy, as the case may be. Should any difficulty arise in the construction of the section and the form of certificate, the former must govern (3).

It is to be regretted that no provision is made in the Act for the registration or filing in the Registry Office of the proof adduced before the Judge. It is submitted that the affidavit or declaration used before the Judge on the application for the certificate should be annexed by the Judge to the instrument, and filed with it in the Registry Office; on the same principle that affidavits of execution are required to be endorsed upon the instrument to be registered, in order to satisfy the public of the due execution of such instrument, and more particularly those affected by the title to the lands referred to in such instrument.

(1) *Murphy v. Leader*, 4 Ir. L. R. (Q. B.), 139.

(2) *Essex v. Baugh*, 1 Y. & Coll., (C.C.) 620; *Doe d. Eennick v. Armstrong*, 1 Hud & Bros., app., 727; *Hobhouse v. Hamilton*, 1 Sch. & Lef. 207.

(3) See *Boyle v. Ward*, 11 U. C. R., 416.

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(1) See 2
(2) Robt
(3) Com.
(4) Rex v.
mot, 9 East
866.

48. The seal of any Court of Record affixed to any instrument Provision in writing, of itself, and the seal of any Corporation affixed to as to corporation such instrument with the signature of the Secretary or pre- sisting officer thereof, shall be sufficient evidence of the due execution of the instrument by the Judge, Registrar, Clerk or Officer of the Court signing the same, or by the Corporation respectively, Reg. Act of 1846, and for all purposes respecting the registration thereof, and no further evidence or verification of such execution shall be required as to for the purpose of registration. 31 V., c. 20, s. 46.

Courts of
Record in
Reg. Act
of 1865

This section, so far as it applies to corporations, was first contained in the Registry Act of 1846 (1), and as to Courts of Record in the Registry Act of 1865.

The "Act and Warrant," (under the Imperial Statute 19 & 20, Vic., cap. 79), is capable of registration in this Province, although it contains no attestation clause, no witness to its execution, and is not under seal. This is by force of the Imperial Act, which declares that such an instrument should be received in all Courts and places within England, Ireland and Her Majesty's other Dominions as *prima facie* evidence of the title of the trustee (2).

"Act &
warrant"
Imp. Act
19, 20, Vic.,
c. 79.

The affixing of a common seal to the deed of a Corporation has a singular effect, for although it is a general principle that delivery is essential to a deed, (for it is not a deed without delivery, although under seal (3),) yet the common seal being so affixed is, of itself, tantamount to a delivery, and suffices to pass an estate in all cases.

Effect of
affixing
common
seal.

The seal must be duly affixed, and must, moreover, be affixed by the party or parties authorized to do so (4).

Must be
duly affixed.

(1) Sec. 29.

(2) Robson v. Carpenter, 11 Gr., 293.

(3) Com. Dig. Fait., A. 3.

(4) Rex v. Haughley, 4 B. & Ad., 650; Derby Canal Co. v. Wil-
mot, 9 East, 360; Hill v. Manchester Waterworks Co., 5 B. & Ad.,
866.

By au-
thorized
party.

Form of
seal.

What
deemed
sufficient
seal.

A Corporation may adopt any seal (1), and can only express itself through a common seal (2).

Where some of the parties executing a deed were Corporate bodies, and the seals were all simple wafer seals, it was *held* that, in the absence of evidence shewing these not to be the corporate seals of the several companies, this was a sufficient sealing on the part of such incorporated companies (3).

Requisites
to validity
of deed by
by Corpo-
ration.

Resolu-
tion of
Directors.

Officer ap-
pointed
must exe-
cute deed
and affix
seal

Proof of
seal.

Technical
conclusion
of Corpo-
ration
seal.

There are three requisites to render a Corporation deed valid viz:—

(1). The resolution of the Board of Directors authorizing the sale, mortgage, or other disposition of the property affected, and the execution of the deed by some officer or officers designated ;

(2). The officer directed to execute such deed must do so in the name of the Corporation, and must affix the Corporate seal ;

(3). The Corporate seal must be proved when the deed is used in evidence.

The usual technical mode of executing the deed of a Corporation is to conclude the instrument which should be signed by some officer in the name of the Corporation, in the following language, or to the same effect :

“ In testimony whereof the common seal of the ————Company is hereunto affixed, and A. B., President of said Company, being duly authorized on that behalf, hath set his hand and affixed the corporate seal of the said Company.”

Ordinary
proof of

The ordinary proof of the execution of a deed by

(1) *Mill-dam Foundry v. Hovey*, 21 Pick., Rep. 417. *Tones v. Galway Town Council*, 11 Ir. L. R. 435.

(2) *Mayor of Ludlow v. Charlton*, 6 M. & W., 823, per Rolfe B; *Rex v. Briggs*, 3 P. Wms., 423.

(3) *The Ont. Salt Co. v. the Merchants' Salt Co.*, 18 Gr. 551, See *Hamilton v. Dennis*, 12 Gr., 325.

(1) Do
also Tayl
(2) Wo
C. R., 19
(3) Do
(4) Bar
(5) Big

a Corporation was by showing that the seal on the deed was the seal of the Corporation. It was not usual to give evidence of its having been affixed by the Corporation, or by its authority (1). Where the seal of a Corporation has been proved by satisfactory legal evidence, the production of a document within the scope of the powers of the Corporation with such seal attached, is sufficient *prima facie* evidence of the proper execution of the document (2). Except for registration purposes, a sealing alone by the Corporation is sufficient (3). A Corporation is not bound when the common seal is unduly affixed (4).

execution
by Corpo-
ration.

What
prima
facie
proof.

Corpora-
tion deeds
must be
signed.

It was formerly the practice to require the lessee under a Corporation lease to execute the lease, on the ground that the affixing the common seal to the memorial would not satisfy the words "hand and seal" (5). The Registry Act, for the purpose of registration however, enacts that the seal of the Court of Record, or of any Corporation, as the case may be, affixed to an instrument in writing shall, of itself, (provided that in the case of a Corporation such instrument shall be duly signed by the proper official therein named), be sufficient evidence of due execution, and no further evidence or verification of such execution shall be required. The effect of this section is simply, for registration purposes only, to dispense with the affidavit of execution in the case of a deed under the seal of a Court of Record, or of any Corporation. It does not do away with the necessity of a witness where

Former
practice of
execution
of Corpo-
ration
leases.

Effect of
section.

To dis-
pense with
affidavit.

- (1) *Doe d. Bank of England v. Chambers*, 4 A. & E. 410; see also Taylor on Evidence pp. 14, 159.
 (2) *Woodhill v. Sullivan, et al* 14 U. C. P., 265; *Fell v. South* 24 U. C. R., 196.
 (3) *Doe v. Hogg*, 1 N. R., 306.
 (4) *Bank of Ireland v. Evans*, 33 Ir. L. & Eq., Rep., 23.
 (5) *Rigge*, 106.

But not a witness.
Seal not evidence *per se*.
By whom seal proved.

one is required. It is proper to have a subscribing witness to the sealing, for the common seal is not *per se* evidence of its own authority, but must be proved; although not indeed necessarily by one who saw it affixed or adopted, but by any one who, from the motto or other device, knows it to be the seal which it purports to be (1).

Signature of officer executing deed should be witnessed.

The signature of the official signing the instrument should undoubtedly be witnessed by a subscribing witness. Especially is this necessary where a certificate of Discharge of Mortgage is executed by a Corporation. In this case if the certificate be simply signed and sealed, but not witnessed, it will be invalid for registration purposes.

Signatures of officers of Corporation executing certificates of discharge of mortgage must be witnessed.

The section relating to certificates of Discharge of Mortgage requires that they should be executed in the presence of one witness, and an affidavit of execution should be made by the subscribing witness. As Certificates of Discharge derive all their effect as reconveyances of the legal estate, under the provisions of the Registry Act, they must be executed in strict conformity thereto. It is clear that certificates executed by Corporations must comply with the Act as fully as those executed by private individuals, except in so far only as the statutory requirements appertaining to such Certificates of Discharge are relaxed in favor of Corporations. The present section dispenses simply with the affidavit of execution being made, in the case of instruments executed by Corporations, or by, or on behalf of a Court of Record, accepting in lieu thereof, the seal and the signature of the proper officer, leaving the requirement as to attestation as it was. Affidavits

(1) *Morris v. Thornton* 9 T. R. 303.

of execution being then only dispensed with, a Certificate of Discharge, under the seal of a Corporation, must still be witnessed by a subscribing witness, otherwise it will be of no effect and the Registrar has no power to receive or register it.

49. Certificates of Chancery proceedings for registration may be Certified by the Registrar of the Court, or by the Clerk of Records and Writs, or by a Deputy Registrar, or by any other official Chancery authorized by the Court to sign the same; and such certificates for Registration may be under the seal of the Court, or under the seal of office (if any) of the officer signing the same. 37 V., c. 7, s. 51; 40 V., c. 7, may sign. Sched. A. (48). See also Rev. Stat., c. 40, s. 89.

The certificates herein referred to are generally composed of those which relate to the filing of a bill, or the taking of any proceeding in the Court of Chancery, in which bill or proceeding any title or interest in lands might be brought in question: and also of certificates of decrees of foreclosure, decrees or orders in alimony cases, vesting orders, and generally every other decree in Chancery affecting such lands. In the consideration of this section, it will be useful to refer briefly to the doctrine of *lis pendens*, so far as it affects registration.

At one time every person was presumed to be aware of what took place in the Courts of Justice, and consequently a purchaser of property which was a subject of litigation, or *pendente lite*, even though for valuable consideration, and without any notice, express or implied, in point of fact, was affected to the same extent as if he had acquired such notice; and was accordingly bound by the judgment or decree in the suit recorded against the person from whom he derived title (1). The litigating parties were exempted from taking any notice of the title so acquired, and such purchaser

"*Pendente lite*, nil innotetur."

Former application of.

(1) Story Eq. § 465-6; *Surrell v. Carpenter*, 2 P. W. 482; *Preston v. Tubbin*, 1 Vern. 496; *Garth v. Ward*, 2 Atk., 175. See also notes to *La Neve v. La Neve*, 2 W. & T., L. C., 62.

Did not
affect pur-
chaser on
ground of
notice.

was not required to be made a party to the suit, according to the maxim *pendente lite, nil innovetur*. In *Bellamy v. Sabine* (1) Lord Cranworth, L. C. said:—"It is scarcely accurate to speak of *lis pendens* as affecting a purchaser upon the doctrine of notice, although undoubtedly the language of the Court often so describes its operation. It affects him, not because it amounts to notice, but because the law does not allow to litigant parties, pending the litigation, rights in the property in dispute, so as to prejudice the opposite party. If this were not so, there could be no certainty that the litigation would ever come to an end. A mortgage or sale made before a final decree, to a person who had no notice of pending proceedings, would always render a new suit necessary" (2).

Equitable
rule is in
harmony
with the
Common
Law

Though this rule of Equity is said to be harsh, yet it imitates the Common Law, where, if in a real action the defendant alienes, pending the suit, the judgment will overreach the alienation. Thus acts of the Court, such as commitment of a wardship, and in a cause depending, are to be taken notice of by every one at his peril (3).

*Lis pen-
dens* not
construc-
tive
notice

It was held that the doctrine of notice has never been carried to the extent of making a *lis pendens* constructive notice of a prior unregistered deed, to affect the purchaser under a registered deed (4).

By 18
Vic. c.
127, Bill
filed not
notice im-
posed cer-
tain reg-
istered

The doctrine being admittedly productive of hardships, it was enacted by the Act 18 Vic., cap. 127, ss. 3 and 4, as follows: III "The filing of any bill or the taking of statute proceeding, in the Court of Chancery for Upper Canada, in which bill or

(1) 1 D. & J. 566; 26, L. J. Chy., 797.

(2) See *Bishop of Winchester v. Paine*, 11 Ves. 197; remarks of Lord M. R.

(3) *Herbert's case* 3 P. Wms., 116.

(4) *Story Eq.*, § 406; *Wyatt v. Barwell*, 19 Ves., 435; *Irons v. Endwell*, 1 Ves., 69; *Wallace v. Lord Donegal*, 1 Dr. & Wal., 461.

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proceeding any title or interest in lands may be brought in question, shall not be deemed notice of such Bill or proceeding to any person not being a party to such bill or proceeding, unless and until a certificate shall be given by the Registrar of the said Court of Chancery to some person demanding the same, in the form mentioned in this section, and registered in the Registry Office of the County or Union of Counties in which the lands are situate, the title or interest in which is questioned in such bill or proceeding. "I certify that in a suit or proceeding in Chancery between A. B. and C. D. some title or interest is called in question in the following lands, (stating them). Provided always, that no such certificate shall be required to be registered in any suit or proceeding for foreclosure of any registered mortgage."

Form of certificate.

Not necessary in foreclosures suits.

"IV. Every decree of foreclosure, and every other decree in Chancery affecting any title or interest in land, shall and may be registered by any person, in the County Registry Office, in the County or Union of Counties where such land is situate, on a certificate to be given by the Registrar of the said Court, stating the substance and effect of such decree, and the lands affected thereby."

Decrees affecting Lands may be registered.

This Act was amended by 20 Vic., cap. 56, sec. 9, which provided that where a bill or other proceeding in Chancery is filed in the office of a Deputy Registrar of the same Court, such Deputy Registrar could grant the certificate referred to in the former Act.

Amended by 20 Vic., c. 56.

These enactments were included in the Con. C. S. U. C. Stat. U. C., cap. 89, and the Registry Acts of 1865 and 1868 respectively.

C. S. U. C. c. 89, Reg. Act of 1865 and 1868.

The Commissioners for the revision of the stat-

Provisions contained in R. S. Ont., cap. 40. County Court on Equity side.

utes have omitted them in the consolidation of the Registry Acts, and have transferred them to "The Chancery Act" (1).

The former Registry Acts included certificates of bills and proceedings taken in the County Court on its Equity side. That jurisdiction has since been abolished (2).

By whom certificate may be signed.

The Clerk of Records and Writs, Deputy Registrars of the Court of Chancery, and other officials authorized by the Court in that behalf, were subsequently empowered to sign such certificates, in the same manner as the Registrar; which certificates might be under the seal of the Court, or under the seal of office (if any) of the officer signing the same (3).

From 18 Vic., c. 127 necessary to register certificate.

Since the passing of the Act 18 Vic., cap. 127, in order to affect a purchaser or subsequent incumbrancer with notice of *lis pendens*, it has been requisite to register a certificate of *lis pendens*, in accordance with the terms thereof (4).

Effect of *lis pendens*. To what certified. Does not extend to any matter not required to be adjudicated upon. Does not affect a

The effect of a *lis pendens*, upon a person having notice thereof is to render his title, in general, subject to the result of the litigation. It extends, however, only to the rights in question in the suit which require to be ascertained; and it does not apply to any other rights, though apparent upon the proceedings in the suit; such as the equity of a defendant against a co-defendant, which is not required to be adjudicated upon for the purposes of the suit (5). A *lis pendens*, being only a gene-

(1) Rev. Stat. (Ont.), cap. 40, s. s. 90, 91.

(2) Law Reform Act of 1868, s. 4.

(3) 37 Vic., cap. 7, s. 51; 40 Vic., cap. 7, Sched. A. (42).

(4) *Shallcross v. Dixon*, 5 Jarm Conv., 493; *Coote on Mtges*, 383.

(5) *Bellamy v. Sabine ante*; *Worsley v. Earl of Scarborough*, 3 Atk. 392; see *Tyler v. Thomas* 25 Beav. 47. *Bull v. Hutchins*, 32, Beav. 615,

ral notice of an equity to all the world, does not ^{person} with ^{fraud.} affect any particular person with a fraud, unless fraud. such person had also special notice of the title in dispute in the suit (1). The effect of the maxim ^{Convey-} ^{ance} ^{taken} "*pendente lite, nil innovetur*" being limited to the rights and parties to that suit, it does not abso- ^{pendente} ^{lite not} ^{void.} lutely annul a conveyance taken *pendente lite*.

Therefore a plea in bar to a bill by a purchaser from the defendant, with actual notice, was over-ruled (2). *Lis pendens* and its effect upon subse- ^{When} ^{effect of} ^{lis pen-} ^{dens} ^{ceases.} quent purchasers and encumbrancers ceases upon judgment or decree, although the judgment re- ^{When} ^{vacated.} mains to be carried into execution (3); but the *lis pendens* will not be vacated until all parties entitled under the decree have received the benefit thereof.

(4). If, after a bill is filed and *lis pendens* regis- ^{Dismissal} ^{of Bill for} ^{want of} ^{service.} tered, the office copy is not served within the time allowed for service, the bill will be dismissed with costs (5).

It will be noticed that in the case of a suit or ^{No certifi-} ^{cate nec-} ^{essary in a} ^{mortgage} ^{suit.} proceeding for the foreclosure or sale of a reg- istered mortgage no certificate is required.

Where L. had created a second mortgage after a bill had been filed to foreclose a prior mortgage ^{Subse-} ^{quent} ^{mort-} ^{gages} ^{take sub-} ^{ject to the} ^{lis pen-} ^{dens on a} ^{prior} ^{mortgage.} upon the same land, which was registered at the time the second mortgage was taken, it was held that the mortgagee in such second mortgage took subject to the *lis pendens*, even though service of the bill had not then been effected, and he had not been made a party to the suit; and a bill filed by him to redeem the prior incumbrance after a final

(1) Mead v. Lord Ossory, 3 Atk., 242: as to what amounts to *pendente lite* see Jason v. Gardiner, 11 Gr., 23.

(2) Metcalfe v. Pulvertoft, 1 Ves. & B. 200.

(3) Jones v. Frost, L. R. 7 Ch., 773.

(4) Arnbery v. Thornton, 6 P. R., 190

(5) Somerville v. Kerr, 2 Chy. Cham., 154.

foreclosure in such suit was dismissed with costs.
(1).

Registra-
tion of
orders and
other pro-
ceedings
in Super-
ior and
County
Courts.

By the Administration of Justice Act (2) the Common Law Courts are empowered to make and issue orders setting aside fraudulent conveyances, and for the sale of the lands therein comprised, and also of the equitable interest of any judgment debtor in lands; and any rule or order, or summons to show cause granted by the Court or Judge, containing a description of the land in question, may, on production thereof, or of a duplicate thereof, without proof of signature be registered in the same manner and to the same effect as a *lis pendens* may now be registered in the Registry Office for the County or Division where the lands are situate, and upon the discharge in whole or in part of such rule, order *nisi* or summons, the rule or order discharging the same, or a duplicate thereof may be registered in like manner.

Adminis-
tration of
Justice
Act does
not pre-
vent party
from pro-
ceeding in
Court of
Chancery.

It has been held, notwithstanding the provisions of the Administration of Justice Act, that a purchaser who had recovered judgment at law for the amount of a deposit, on account of a purchase which had been rescinded, had a right to institute proceedings in the Court of Chancery to enforce his lien, his object being to obtain *lis pendens* which he could not obtain at law, in order to prevent the vendor disposing of his lands (3).

Registra-
tion of de-
cree dis-
missing
Bill will
vacate *lis
pendens*.

Where the certificate of *lis pendens* has been registered, and the bill is afterwards dismissed, it is not necessary to obtain an order discharging the certificate from the Registry. The registration of

(1) Robson v. Argue, 25 Gr. 407.

(2) Rev. Stat (Ont.) cap. 49, s. 10 et seq.

(3) Burns v. Griffin, 24 Gr., 451. See Cochrane v. Franklin 13 U. C. L. J. (N. S.) 91.

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the decree dismissing the bill being sufficient for all purposes (1).

By the 28 Vic. Cap. 17, sec. 4, an order or decree in alimony may be registered in any Registry Office in the Province, and such registration shall, so long as the order or decree registered remains in force, bind the estate and interest of every description which the defendant has in any lands in the County or Counties where such registration is made and operate thereon for the amount or amounts by such order or decree ordered to be paid in the same manner, and with the same effect, as the registration of a charge of a life annuity created by the defendant on his lands would; and such registration may be effected through a certificate of the Registrar of the Court of such order or decree. A certificate of *lis pendens* should not be issued in a suit brought for alimony only (2).

No certificate of *lis pendens* in suit for alimony only.

A decree is not constructive notice to any persons, who are not parties or privies to it; and therefore other persons are not presumed to have notice of its contents. But a person who is not a party to a decree, if he has actual notice of it, (as by registration of the decree,) will be bound thereby, and if he pays money in opposition thereto, he will be compelled to pay it again (3).

How far a decree is conclusive notice.

Where a decree on further directions had been registered against lands, and afterwards the original decree was reversed on re-hearing, VanKoughnet C. held that the order reversing the original de-

Reversal of registered decree.

(1) *Dexter v. Cosford*, 1 Chy. Cham. 22. see *Graham v. Chalmers* 2 Chy. Cham. 53. *Pooley v. Bosanquet*, 7 L. R. (Ch. Div.) 541, *Chilton v. Lee*, Ib.

(2) *White v. White*, 6 P. R. 208.

(3) *Story Eq. §. 407*; *Harvey v. Montague*, 1 Vern. 57; *Davis v. Earl of Strathmore*, 16 Ves. 419.

Mode of
getting rid
of *lis pen-
dens*.

creed destroyed the lien (1). It was also held in this case, that the Court cannot discharge the *lis pendens* or an application for that purpose—the mode of getting rid of it being by dismissal of the bill. Under certain circumstances, the writ will grant an order vacating the registration of the certificate of *lis pendens*, although the bill be not dismissed. As where a fictitious suit was brought for the express purpose of registering a *lis pendens* to prevent defendant from alienating his property before a judgment at law could be recovered, an application to remove the bill of complaint was granted upon the affidavits filed, showing direct admission by the placing of the matter of the suit for an early hearing (2).

For form of order vacating registry of certificate see Appendix A. A Registrar is not obliged to register a certificate of *lis pendens*, unless the lands effected thereby are clearly mentioned therein (3).

Registrar
to deliver
certified
copy of
power of
attorney
registered.

50. Where a power of attorney or any substitution thereof is registered, the Registrar shall deliver a certified copy or copies of such power or substitution as may be required of him, and of all the documents aforesaid connected with, or relating to the same, under his signature and seal of office, in which certificate he shall declare the time, place and other particulars of registration as in other cases under this Act, and he shall also declare that the copy, which he so delivers, is a true copy of the Power or substitution, and of all the other documents connected with or relating to the same of which they respectively purport to be copies, and that the originals have been duly deposited in his office according to the statute in that behalf, 31 V., c. 20, s. 47.

First al-
lowed to
be regis-
tered by
16 Vic.,
c.187.

Letters or Powers of Attorney were first admitted to registry under the Act, 16 Vic., cap. 187, sec. 7, which provided, that whenever after the passing of that Act, a deed or conveyance should be executed under a letter or Power of Attorney from the grantor or grantors, a memorial of such letter or

(1) *Graham v. Chalmers*, 2 Chy. Cham., 53. see *Dexter v. Cosford* 1 Chy. Cham. 22.

(2) *Jameson v. Laing* 7 P.R. 404. See *White v. White*, 6 P.R. 208.

(3) *In re Thompaon and Webster*, 25 U. C. R., 237.

Power of Attorney might be registered upon the same conditions as other memorials. The Act 20, ^{20 Vic.} ~~127.~~ Vic., cap. 127, sec. 5, extended the registration of Powers of Attorney, to those under which instruments might be executed out of the Province. The memorial of the Power of Attorney was in either case required to be under the hand and seal of one or more of the constituents, or of the constituted, and attested by two witnesses, one of whom was also to be a witness to the Power of Attorney.

These statutes referred only to Powers of Attorney, under which "deeds, conveyances and assurances" were executed; those under which discharges of mortgages and other "instruments," were to be executed were first expressly provided for by the Registry Act of 1865; the forty-seventh ^{Reg. Act} ~~of 1865.~~ section of which Act is identical with section fifty of the present Act.

This section is designed to meet the inconvenience experienced prior to the Registry Act ^{of 1865.} ~~section.~~ of 1865, when the Power related to lands lying in different Counties or Registration Divisions; in such a case, as the Power would be registered in one County or Division, a fresh Power had to be obtained sometimes at great trouble, in order to register the same in another County or Division.

The word "aforesaid" in the fourth line from the top of the section, although appearing in the Reg- ^{Verbal} ~~error in~~ istry Acts of 1865 and 1868, should be expunged, ^{section.} ~~section.~~ being evidently an error overlooked.

The privilege hereby conferred, of obtaining as many certified copies of the Power as the party ^{Certified} ~~copies of~~ registering the same may desire, facilitates the reg- ^{Power.} ~~Power.~~ istration of the Power in other Counties or Divisions, as provided for in the two following sections.

It will be noticed that the Act provides for the

Certified
copies of
other doc-
uments.

delivery by the Registrar to the party requiring the same, in addition to the certified copy or copies of the Power, certified copies of the documents connected with or relating to the Power, presumably of those instruments executed thereunder.

Confused
language
of section.

The language of the section, in speaking of the contents of the certificate to be given thereunder, is not very clear or distinct. It assumes that the party obtaining a certified copy of the Power is also obtaining a certified copy or copies of the instruments connected therewith; as the certificate, in addition to the other information usually contained in other cases under the Act must include a declaration by the Registrar that the copy delivered by him is a true copy, not only of the Power, but also of the other documents, etc., and that the originals have been duly deposited, etc.

What if
copies of
other in-
struments
are not re-
quired?

If the party requires and obtains a certified copy of the Power only, and does not require a certified copy of the other documents connected with such Power, in what form shall the Registrar give his certificate?

Intention
of the
Legisla-
ture.

The intention of the Legislature must be gathered from the whole statute, where in any particular section it is not clearly discernible. Under the twentieth section of this Act the Registrar is empowered to grant certified copies of registered instruments "when required and upon payment of legal fees;" and under the twenty-first section, he is to furnish such copies "on request of any person."

Strained
construc-
tion to
hold that
copies of
other doc-
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It would be giving a strained and arbitrary construction to this section to hold, that as the form of the certificate to be given by the Registrar implies that when a certified copy of the Power is given, it should be accompanied by a certified copy

of every instrument connected therewith, a copy of every instrument registered in the office, and executed under such Power, should invariably accompany the copy of the Power.

Section fifty-one *post* forbids such an interpretation as it refers to the registration of the copy of the Power only, and does not extend to the registration of the accompanying copies of instruments connected therewith; which indeed it could not do, as the instruments referring to lands situate in the Division where originally registered and generally to such lands alone, could not be received for registry where the lands do not lie.

It is clear, therefore, that a certified copy of the Power alone can be obtained, and that the certificate then must refer to that alone. It would be more satisfactory, however, if this section were amended, so as to remove all doubts by striking out the word "aforesaid" above referred to; by inserting the words "if required" after the word "same" in the fifth line from the top; and by stating more clearly what the certificate should contain.

A form of the certificate under this section will be found in Appendix A.

51. Every such certified copy where the original Power or substitution is deposited as aforesaid, may be registered in any other Registry Office, by deposit thereof, without production of the original Power or substitution; and without proof of any kind, other than the production of the copy so certified as aforesaid.

Use and effect of such certified copy.

This section dispenses with any proof of execution of the original Power, by authorizing the registration of the certified copy upon the mere production of such copy. The effect of such certified copy is, for registration purposes, analogous to the case of a Record, which, when used as evidence, proves itself.

Effect of section.

To be *prima facie* evidence. as *prima facie* evidence of the original Power or substitution entitled to be received in all cases in place of the original evidence. of due execution, provided that notice has been given in the manner set forth in section forty-six of the "Evidence Act." 31 V. c. 62, s. 46. 20, s. 49.

Evidence of the execution of original Power.

Not only is the certified copy of the Power entitled to be received and registered by the Registrar of another County or Registration Division upon its mere production, but provision is herein made for its reception in all cases in place of the original Power, as *prima facie* evidence of such power and of its due execution; provided that the party desiring to use such certified copy in lieu of the original Power gives notice to the opposite party, at least ten days before the trial, of such intention and such opposite party neglects to intimate within four days after receipt of the notice that he disputes the validity of the original Power. In case such intimation is given within the four days the certified copy cannot be used (1). This section appertains rather to the department of evidence than to that of registration of documents.

Ten days notice.

Registry of instrument in several Registry Offices.

53. Where it is desired to register an instrument, other than a will, in more than one Registry Office, the same may be registered in like manner as is provided as to Powers of Attorney by sections fifty and fifty-one of this Act. 39, V. 25, s. 6.

The facilities granted under the preceding section for the registration of Powers of Attorney in more than one Registry Office, were extended to the case of all other instruments, except Wills by the statute, 39 Vic., cap. 25, sec. 6, from which this section is taken.

Registration of notarial copies of instruments ex-

54. Every notarial copy of any instrument executed in the Province of Quebec, the original of which is filed in any notarial office according to the law of Quebec, and which cannot therefore be produced in Ontario, and every prothonotarial copy of any instrument executed in Quebec shall be received in lieu of and as *prima facie* evidence of the original instrument, and may be

(1) Rev. Stat. (Ont.) chap. 62, sec. 46. See page 57 *ante*. See Canada Permanent L. & S. Co. v. Page, 30 U. C. P. 1.

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registered and treated under this Act for all purposes as if it were executed in fact the original instrument, and such notarial or protho-Quebec. notarial copy shall be registered without any other or further proof of the execution of the same, or of the original thereof, with the seal of the notary or prothonotary attached, 34 V., c. 25, s. 2.

According to the laws of the Province of Quebec, Execution of deeds according to the law of Quebec, deeds, conveyances, assurances and all other instruments affecting land are drawn before and signed by Notaries Public, a profession distinct from that of Advocates. The notary files and retains the originals in his office, keeping an official index thereof, and numbering the several instruments in the order that they are drawn and executed before him. Certified copies of such instruments are by the laws of that Province made authentic evidence. Upon the death of the Notary Public, his heirs are by law required to deposit the original deeds filed by him in Court, whence copies or extracts certified by the prothonotary of that Court may be obtained.

The duties of a notary in respect to instruments drawn before and passed by him are defined by the Act, 33 Vic., cap. 28, (Q.) ; and as it may be 33 Vic., c. 28 (Q.) found convenient to refer thereto, the leading provisions of that Act are briefly summarized as follows :

[The Acts relating to Notaries Public have been since consolidated and amended by 39 Vic., c. 33 (Q).]

All instruments must contain the name and place Contents of instruments. of residence of the notary, together with the names, additions and residences of the witnesses, and the day of the month and year when passed (sec. 29).

They must be written in the same handwriting; How written. the names, surnames, additions and residences of the parties to the instrument and witnesses thereto, amounts and dates must be set forth at length. powers of attorney, under which a party contracts,

must be annexed to the minute, unless executed before a notary, and be sufficiently described in the minute, which must state that it was read to the parties. Blank forms may be used, but the blank spaces must be filled in with a heavy stroke of the pen (sec. 30).

How executed.

The instrument must be signed by the parties, witness and notary: the last making mention of such fact at the end of the instrument. If any parties are unable to sign, the notary must also record at the end of the instrument, a declaration of such inability (sec. 31).

Marginal notes and additions.

Notes and additions (with the exception of those hereinafter mentioned,) are to be written in the margin, and signed or paragraphed as well by the notaries as by the parties; otherwise such notes and additions will be null. Where the length of the note requires it to be carried to the end of the instrument it must, in addition to being signed or paragraphed as aforesaid, be further expressly approved of by the parties, under pain of nullity (sec. 32).

No interlineations allowed.

No words are to be written over or interlined, nor can additions be made in the body of the instrument. Words erased are to be erased in such a manner, as to enable the number of them to be established in the margin of the corresponding page, or at the end of the instrument, and approved of in the same manner as marginal notes (sec. 33).

In what cases originals need not be filed in notary's office.

There may be executed and delivered on demand of the parties, *on presents*, singly, or in duplicate, life certificates, partial releases, procurations, powers of attorney, acts of notoriety, discharges of rent or farm rent, of salaries, of arrears, of rent or pensions, obligations or agreements purely

personal, unless their effect is to be perpetual, and pass from the contracting parties to their heirs, or representatives; declarations, notices of family councils, appointments and reports of experts, attestations, disavowals, releases, discharges in respect of papers and movables, and other documents, the effect whereof must not be perpetual, or which do not confirm or discharge the effect of a deed executed *en minute* (39 Vic., c. 33, s. 63).

The right of executing copies of a minute shall be exclusively vested in the notary or prothonotary who is in possession thereof. But any notary may execute a copy of any act which shall have been lodged with him as a minute (sec. 36).

Notaries must not permit any minute to go out of their possession, except in cases provided for by law, and in virtue of a judgment. In such cases they must draw up and sign a *facsimile* of such minute; which after being certified to as correct by the Judge or prothonotary of the district, is to be substituted for such minute, until the latter is restored on payment of his fees (sec. 37).

Instruments passed before a notary must be numbered consecutively (sec. 38).

Notaries, when required, must deliver certified extracts from their minutes; and prothonotaries of the Superior Court may deliver extracts from the minutes lawfully in their custody and possession, which certified extracts shall be authentic evidence of their contents, until proceeded against by improbation. The certified extracts are to contain the date, nature of deed, christian and surnames, addition, place of abode of parties, place where the deed passed, the name of the notary receiving the same, the desired parts of the instrument at

full length, and the day upon which the extract is delivered (sec. 41).

Minutes held by any Notary dying after Dec 24, 1868: The minutes and depositories of any notary dying since the 24th of February, 1868, or who has resigned, or desires to retire from practice, or leaves his judicial district may, by the permission of the Lieutenant-Governor in Council, duly announced in the Official Gazette, and with the consent of such notary, his heirs or representatives, be transferred to another notary resident in the same place, or within twelve miles thereof, but within the same district (sec. 42).

Rights of purchasing Notary: The purchasing notary and his successors obtaining such minutes and depositories, may deliver certified copies thereof, signed and certified, which copies shall be authentic evidence thereof; provided that in certifying he mentions the date of the Order in Council under which the minutes passed into his hands (sec. 43).

When minutes and depositories must be lodged with prothonotary of Superior Court: Unless an Order in Council has been obtained under section forty-two, the minutes of any deceased notary, or of one becoming incapable of acting or refusing to act and to deliver copies of his notarial deeds, or who has been interdicted, or removed from office, or left his domicile, or desirous of withdrawing from practice, or is incapable of practice, or is declared so to be, shall be deposited by him or his heirs or legal representatives in the office of the prothonotary of the Superior Court of the district in which such notary resides or resided (sec. 48).

When minutes returned: On resuming practice such minutes so deposited will be restored to him (sec. 49, ss. 4).

Prothonotary: Copies of the minutes so deposited, certified and signed by the prothonotary having the custody

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thereof, shall be authentic, and be received in evidence in the same manner, and to the same extent, as if signed and certified to by the notary who passed the minutes.

Notarial
copies.

Under the Act 13-14, Vic., chap. 39, in cases arising under section forty-two of the above recited Act, the minutes were required to be deposited with the Board of Notaries, and certified copies of such minutes were delivered by the Secretary of the Board, which copies were authentic. This practice continued, until, by the Act 20, Vic., cap. 44, (Con. Stat. L. C. cap. 73) it was provided that the minutes should be deposited with the prothonotary of the Superior Court as set forth above.

Deposit of
minutes
with
Board of
Notaries.

By section forty-seven of the Act 33 Vic., cap. 28 (Q.) the notarial documents and papers transmitted by the Board of Notaries to the prothonotary of the Superior Courts were declared to remain as part of the records of the latter office.

Transmitted to prothonotary to remain part of records.

Under the Act 34 Vic., cap. 13, sec. 3 (Q.), every copy certified by a notary of any document annexed to the minute of one of his acts shall be *prima facie* proof thereof, and be considered as authentic.

Notarial
certified
copies
prima facie
proof.

The word "minutes" mentioned in the Acts above referred to means the originals.

"Minutes."
Copies of
wills.

In addition to notarial minutes deposited with the Prothonotary he delivers and certifies to copies of probated wills which have been made before witnesses, or in holograph form, and also of all other documents of record in the Supreme Court.

Seal of the
Notary,
&c., must
be affixed.

It is to be noticed that the seal of the notary or prothonotary is necessary to be annexed to the certificate under this section.

A certified copy of a power of attorney to convey lands from the deposit of notarial records in the

Copy
power of
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Notarial
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Effect of
notice of
unregis-
tered no-
tarial
copy.

Word
"may" in
section is
really im-
perative.

Province of Quebec, under the corporate seal of the Board of Notaries of Montreal, is admissible in evidence; it being presumed that such power of attorney, though not in itself an official document, came officially into the hands of the notary, among whose records it was found (1).

Under the thirty-second and thirty-third sections of the "Evidence Act" (2) a notarial copy of any notarial act or instrument in writing made in the Province of Quebec before a notary, filed, enrolled or enregistered by such notary is receivable as evidence in any judicial or other proceeding either at Law or in Equity in this Province in lieu of the original, and will have the same effect as if the original were produced; but may be rebutted or set aside upon proof that there is no such original or that the notarial copy is not a true copy of the original in some material particular, or that the original is not an instrument of such a nature as may, by the law of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary in Quebec.

It is conceived that, in analogy to the provisions of the Evidence Act, the effect of the registration of a notarial copy registered under this section can be discharged, and the priority gained by such registration be set aside, upon the same grounds as in the case of other documents.

Notwithstanding the word "may" in the seventh line from the top of this section, the Registrar is obliged to register such notarial or prothonotarial copy, the option of registering such copy being confined to the party desiring to register.

(1) *Gray et al. v. McMillan*, 5 U. C. P., 400.

(2) Rev. Stat. (Ont.) cap. 62.

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CHAPTER VIII.

MANNER OF REGISTERING.

- §55. All registrations to be at full length and how.
- §56. Instruments in two or more parts.
- §57. Instruments relating to several lots in different localities.
- §58. Registration of deeds containing lands situate in more than one County, and of which no memorial has been executed.
- §59. Copying into Registry Book. Filing away instrument and affidavit. Certificate and its effect.
- §60. Pages and instruments to be numbered.

§55. All instruments that may be registered under this Act shall be registered at full length, including every certificate and affidavit, excepting certificates by the Registrar, accompanying the same, upon and by the delivery to the Registrar of the original instrument, when but one is executed, or when such instrument is in two or more original parts, upon and by delivery of one of such parts. 31 V., c. 20, s. 52.

Prior to the Registry Act of 1865, the method of registering instruments was by means of a memorial, which contained merely the date, the names and addresses of the parties and witnesses to the instrument, and the description of the lands affected as contained therein; and afforded but very slight and unsatisfactory information as to the other, frequently the most important, portions of the instrument. For example, it was not necessary under the Registry Act of 1795, in the memorial of a mortgage, to notice the proviso for redemption (1).

The Registry Act of 1865 (2), effected a long needed reform in this respect, and required that all instruments, executed from and after the first day of January, 1866, should be registered at full

Registration by memorial prior to Reg. Act of 1865.

Unsatisfactory mode.

Registration at full length from 1st Jan., 1866.

(1) *Hamilton v. Lyons*, 5 O. S., 503.
(2) Sec. 30.

length, including every certificate and affidavit, except certificates by the Registrar.

Registration in full not a modern conception.
Sir Mathew Hale.

The idea of registering instruments in full, is by no means a modern one. So long ago as the year 1694, a few years prior to the passage of the first Registry Act, Sir Mathew Hale urged the adoption of this method, in an essay entitled "a Treatise, shewing how useful, safe, reasonable and beneficial the enrolling and registering of all conveyances of land may be to the inhabitants of this kingdom."

Imperial Act 8, Geo. 3, c. 6.

The Imperial Act 8, George II., cap. 6, contains a provision allowing parties to have instruments registered at full length.

Import of word "delivery."

In this section, the word "delivery" imports a delivery for the purpose of being retained by the Registrar; not the ordinary delivery of more than one original part, for the purpose of enabling the Registrar to compare with the one to be retained, and to obtain a certificate of registration endorsed thereon.

What certificates are meant.

The certificates which are to be registered in full, with the instrument, include Judges' certificates as to proof of execution, having been adduced under section forty-seven *ante*, certificates by the Judge, authorizing Bar of Dower (1); and in fact every certificate, other than those given by Registrars.

Not necessary to deliver all original parts at same time.

Though it is more convenient, and less troublesome to the Registrar, it is not essential that a party desiring to register an instrument, which is executed in more than one original part, should deliver to the Registrar all of the originals at one time. He can produce one, and, provided it is accompanied by a proper affidavit of execution,

(1) See Rev. Stat. (Ont.) caps. 126-127; 43 Vic., c. 14, s. 4.

the Registrar must receive it and register it. Afterwards, if the party desires to obtain a certificate of registration endorsed upon any of the duplicate originals, he can do so by delivering such duplicate or duplicates to the Registrar, who, on comparison of the same with the original, is obliged to endorse a certificate of registration upon each of such duplicates.

It is not at all probable that instruments in duplicate will be presented for registration in the manner above mentioned; but cases may sometimes occur, where a duplicate original intended to be presented and endorsed at the time of the registration of the other is, from some cause or other, not forthcoming. In such a case, the registration of the duplicate produced need not be delayed or affected; the missing duplicate can, at any time afterwards, be presented to the Registrar for endorsement of certificate of registration.

56. In case one of two or more original parts is registered, the Registrar shall endorse upon each of such original parts a certificate of such registration, in the form of Schedule G. to two or this Act, and such original, so certified, shall be received as more *prima facie* evidence of the registration and of the due execution parts. of the same—31 V., c. 20, s. 53.

Under the fifty-ninth section *post*, the Registrar is required to endorse a similar certificate.

Effect of
certificate
under this
and sec-
tion 59

But while, by the section now under remark, it is declared that the certificate shall be received as *prima facie* evidence of both the registration and due execution of the instrument, the duplicate original of which is so certified to, the fifty-ninth section only declares the certificate to be evidence of registration.

It is not easy to see why any distinction should be drawn by these sections as to the effect of the certificate; for it is clear, that if under the present

section the certificate is *prima facie* evidence of the execution of the instrument, upon a duplicate original of which it is endorsed, it is equally available as such in any proceedings in a Court of Law or Equity, independent of the provisions of the fifty-ninth section. The latter, by providing that the certificate shall, under that section, be evidence of registration, does not imply that it shall be confined to evidence of that fact alone.

Under the Registry Act of 1795 it was at one time held that the certificate of registry endorsed on a deed was conclusive evidence of such registry, and could not be impeached by evidence of irregularity (1). It was subsequently held that it was *prima facie* evidence only (2). *Semble*, that a certificate of a discharge of mortgage, endorsed on the mortgage, is sufficient evidence of the re-conveyance, without proof of the execution of the discharge itself (3).

Evidence
in action
of eject-
ment.

In an action of ejectment the plaintiffs, in proof of a mortgage under which they claimed title, produced the registered duplicate original thereof, with the Registrar's certificate endorsed thereon. It was held, that by virtue of this section there was *prima facie* evidence of the due execution of the Mortgage (4).

Presump-
tion.

The Court will presume that the person signing the certificate of registration endorsed upon an instrument is the Registrar, at the time when instrument was registered (5).

When cer-
tificate

A certificate of registration endorsed upon a

- (1) Doe d. Russell v. Gillett, M. T. 3 Vic.
- (2) Doe d. McLean v. Manahan, 1 U. C. R., 491. See Doe d. Brennan v. O'Neil, 4 U. C. R., 8.
- (3) Doe d. Crookshank v. Humberstone, 6 O. S. 103.
- (4) Canada Permanent L. & S. Co. v. Page, 30 U. C. P. 1. See Kelly v. Morray, L. R. 1 C. P., 667.
- (5) Briggs v. McBride, 1 Pug. & Bur., 663.

deed, and dated in 1866, stated that the deed ^{should be} ~~was~~ registered upon 29th April, 1836. *Quere*, whether the certificate should not have been made at the time the deed was registered (1). *Quere*, whether a proper certificate could not be endorsed at the trial (2).

A certificate, given under the New Brunswick Registry Laws, was held to be sufficient, although it did not certify that he was the Registrar of the County in which the lands were situate; it being held that extrinsic evidence of that fact could be adduced (3).

The certificate is required, by our Act, to be ^{Must be} ~~endorsed upon~~ the registered instrument and duplicates, if any. Under the Quebec Registry Laws, it is no objection to the sufficiency or validity of the certificate, that it is written upon a separate sheet than that upon which the deed is written (4).

17. When any instrument includes different lots or parcels of ^{instru-} ~~land~~ and situate in different Municipalities in the same County, it ^{is not} ~~is~~ necessary to furnish one duplicate original of such ^{instru-} ~~land~~ instrument, with an affidavit of its execution, and such duplicate ^{original and affidavit shall be copied into the Registry Book per lot or} ~~original and affidavit shall be copied into the Registry Book per lot or~~ ^{containing to each City, Town, incorporated Village, Township or different} ~~containing to each City, Town, incorporated Village, Township or different~~ ^{case wherein the lands therein mentioned are situate, and the localities.} ~~case wherein the lands therein mentioned are situate, and the localities.~~ Registrar shall make the necessary entries and certificates accordingly. 31 V., c. 20, s. 54.

This section is substantially the same as that ^{Act 16 V} ~~introduced by the Act 16 Vic. cap. 187, sec. 5,~~ ^{c. 187.} which enacted that when an instrument related to land in several localities in the same County only one memorial need be provided, which was to be copied into the different Registry Books for such localities, and the necessary entries and certificates were to be made by the Registrar.

Under this section it has been held that the ^{Principles} ~~Principles~~ ^{Reg. Act} ~~Reg. Act~~

- (1) Doe d. Robinson v. Chassey, 1 Han., 50.
- (2) Doe d. Kerr v. McCully, 3 All., 194.
- (3) Doe d. McKenzie v. Mosher, 2 Pug., 355.
- (4) Foley v. Godfrey, 9 L. C. J., 154.

of 1865,
Registrar
not re-
quired to
enter
lands situ-
ate in an-
other
Township.

Must now
register at
full
length.

Fees for
entries.

Registrar should record the memorial in every township in which the lands embraced were situate; but he was not obliged to enter in the book of any township, lands other than those lying in that township (1).

This ruling could, of course, not hold good after the Registry Act of 1865 came into force, as that Act, similarly to the present one, required the instruments to be registered at full length.

When a Registrar refused to register a mortgage requiring to be recorded in five townships, unless he was paid at the rate of five distinct registrations; upon an application for a mandamus to compel him to do so, the Court held that he was entitled to charge for only one registry, provided the number of words recorded did not exceed eight folios; and that all in excess of eight folios were to be charged for per folio as allowed by the Registry Act then in force, namely thirteen cents per folio (2).

Registra-
tion of
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ate in
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and of
which no
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has been
executed.
Introduc-
ed by 34
Vic., c. 26.

58. Every deed executed prior to the fourth day of March, one thousand eight hundred and sixty eight, affecting lands situate in more than one County, and of which said deed no memorial has been executed, may be recorded in any one of the Counties in which some of the lands are situate, upon proof made in accordance with this Act, and in the other Counties by deposit of a copy of every such deed and proof certified as is provided with respect to Powers of Attorney in sections fifty and fifty-one of this Act, 34 V. c. 26, s. 1.

A new provision introduced by Stat. 34 Vic. cap. 26, sec. 1. A deed executed prior to March 4th, 1868 (the date of the passage of the Registry Act of 1868), affecting lands situate in more than one County, and of which no memorial has been executed, stood in a position similar to that of a power of attorney; once registered no steps could be taken to register it in another County. Under this sec-

(1) *Smith et al v. Ridout*, 5 U. C. R. 617.

(2) *In re Lount*, 11 U. C. P., 97.

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tion, however, the Registrar is enabled to deal with it as he would with a Power under sections fifty and fifty-one *ante*. A copy, or copies, of such deed duly certified by him, such certificate containing the requisite set forth in section fifty, can be registered in other Counties, upon production, without further proof.

There is evidently some error in referring to the date in this section. Deeds executed after January 1st, 1866, were, under the Registry Act, to be registered at length, as under the present Act, and not through memorials; and that date should have been inserted instead of March 4, 1868.

As the section speaks of a deed executed prior to the fourth day of March, 1868 "of which no memorial has been executed," would it apply in a case where a memorial, had, in fact, been executed, but had not been registered, owing to loss, destruction etc. ?

What if memorial executed, but not registered owing to loss, &c. ?

As the plain intention of the Act is to relieve persons claiming under deeds relating to lands in different Counties, executed prior to the date referred to, where there are no memorials, from the difficulty in which they would be placed by the deposit of the deed itself in one of the Registry Offices, and as that difficulty is in no way lessened or varied whether a memorial was executed, or being executed, was destroyed or lost, it is reasonable to infer that such a deed, where the memorial has been executed, but has been lost or destroyed, is within the provisions of this section.

Intention of the section,

It is to be remarked, that by some oversight the Act does not require any declaration or proof on the part of the person registering the deed that a memorial thereof was not executed, and therefore

No declaration of non-execution of memorial required.

the Registrar cannot demand such declaration or proof.

Certified copy of such deed not evidence of its execution.

As section fifty-two *ante* applies only to certified copies of a power of attorney or substitution, a certified copy of a deed coming under the provisions of this section is not necessarily *prima facie* evidence of the *execution* of such deed, although it will be *prima facie* evidence of the deed under section twenty-four *ante*.

Copying into Registry Book. Filing away in instrument and affidavit.

Certificate and its effect.

59. The Registrar or Deputy Registrar of the County in which the lands are situate shall, upon production to him of the original instrument, duplicate or other original part thereof, together with an affidavit of execution, enter the said instrument in the Registry Book, in the order in which it is received, and he shall file the same with such affidavit of execution, and he shall endorse a certificate on every such instrument, and upon every duplicate of such instrument in the form of Schedule G to this Act, and shall therein mention the certain year, month, day, hour and minute, in which such instrument is entered and registered, expressing also in what book the same has been entered, and the number of registration; and the said Registrar or his Deputy shall sign the said certificate when so endorsed, which certificate shall be allowed and taken as evidence of such respective registries in all Courts. 31 V. c. 20, s.s. 55 & 56; 40 V. c. 7, *Sched. A.* (127).

The duties of the Registrar under this section have been included in all our Registry Acts with more or less particularity of detail.

Registrar must examine closely instruments for registry.

It is incumbent upon the Registrar to make a close examination of the instruments executed in more than one original part, which are presented to him for registration, with a view to ascertain that they are in duplicate. He is in duty bound to examine the instruments presented to him for registry.

Must reject if not in conformity with Registry Act.

Where registration is made through duplicate originals he should be satisfied that the duplicates correspond in every particular; and where registration is made otherwise than through duplicate

(1) F
4 Ir. C
(2) F
2 Ir. J
(3) F
(4) M
S., 304.

originals he should see that the statutory requirements are properly complied with (1).

He must decline to receive for registry any instrument not in conformity with the Registry Act (2); and no mandamus will lie against him in such a case (3).

His discretion in the reception or rejection of instruments presented for registry, is limited, however, to matters solely connected with registration. If an instrument complies with the Registry Act, the Registrar cannot reject it, no matter how defective it may be in other respects (4).

The Registrar cannot avoid the performance of this duty by qualifying or modifying the certificate required under this section, with regard to any of the matters required to be set forth therein. In case of such qualification or modification the person entitled to the certificate can, and should, refuse to accept such qualified certificate, and compel the Registrar to furnish a proper certificate. It is doubtful whether, if the certificate under this section should be qualified or modified as to any matters required to be stated therein, it could be received in evidence of the registry of the instrument to which it relates.

A Registrar endorsed upon a mortgage, sent to him for registry "No. 44,322 purporting to be a duplicate thereof was registered at— on— etc.," and refused to endorse upon the mortgage an absolute certificate of its registration; alleging as his reason that it was no part of the

(1) Reg. v. Reg. of Middlesex, 15 Q. B. 976; Abbott v. Geraghty 4 Ir. Chy., 15.

(2) Reg. v. Reg. of Middlesex, 1 Ell. & Ell. 322, in re Monsell 2 Ir. Jur. (N. S.) 66.

(3) Reg. v. Reg. of Middlesex 15 Q. B. 976, *supra*.

(4) Mill v. Hill 3 H. of L., ca. 829; McDonell v. Murphy, 2 F. & S., 304.

Cannot reject if otherwise defective.

Cannot modify certificate
Qualified certificate not receivable in evidence.

Certificate stating that instrument "purporting to be" registered is invalid.

duty of the Registrar to compare duplicate instruments. Upon an application made for a writ of mandamus, to compel him to make the endorsement required by this section, it was held, that the certificate which he had given was not in compliance with the provisions of the statute; the Court remarking that there were "no words to be found in any of the sections indicating that the Registrar might sign the certificate without examination, or endorse on the instrument a qualified acceptance." (1).

Where a Registrar improperly endorsed a certificate upon a mortgage, whereby a subsequent purchaser was misled, it was held, that as it was the duty of the Registrar to make the endorsement properly, his omission was not the fault of the mortgagee, and could not therefore affect his rights, or impair his security; and the party injured was left to seek redress by action against the Registrar (2).

Where certificates are issued under a statute, the requirements of such statute should be followed (3).

The instruments must be entered in the order that they are received by the Registrar.

A Registrar and his Deputy, having designedly entered instruments in a different order to that in which they were received, were jointly indicted and convicted of a misdemeanor (4).

Where instruments were shown to be registered upon the same lands, upon the same day, and at

Instruments must be entered in consecutive order. Willfully entering in wrong order is a misdemeanor.

- (1) *In re Bradshaw v. Registrar of Simcoe* 26 U. C. R., 464.
- (2) *Dikeman v. Purchaser*, 1 Daly (N. Y.), 489; see *Irish v. Harvey*, 44 Penn. (6 Wm. & M.), 78; *Laswell v. Pres. Ch.*, 46 Mo., 279; see notes to sec. 15 ante.
- (3) *Reg. v. Harvey*, L. R. 11 Q. B., 46.
- (4) *Reg. v. Benjamin et al.*, 4 U. C. P., 179.

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the same hour, they will be assumed to have been registered in the order in which they were received by the Registrar as indicated by their respective numbers, and will be entitled to priority accordingly (1).

It has, however, been determined in the Quebec Courts, that where the certificates show that two instruments have been registered at the same time, but a precedence in number has been accorded to one instrument over the other, both instruments must, under the Act 4 Vic., c. 30, s. 11, be colligated concurrently in a report of distribution (2). So where two deeds have been registered at the same time those Courts have held their respective priorities are to be decided, not by the order in which they are numbered by the Registrar, but by the dates at which they were executed (3).

Where two deeds were written on the same sheet of paper, and registered at the same time, but only one certificate of registry, and one number were endorsed on the sheet, it was held, that the Registry Book was properly admitted in evidence to show that both deeds were registered (4).

Where a deed by the memorandum endorsed appeared to have been acknowledged (as required under the Registry Act of New Brunswick) on June 6th, but the certificate of registry was dated June 5th, the Registry Book was admitted in evidence to show that the deed was registered on June 5th, and that the memorandum of acknowledgment was upon it on that day (5). A deed, offered as a reg-

Registry Book, evidence of entries.
Certificate showing

(1) Neve v. Pennell, 1 Bam. & M., 170; 33, L. J. Chy. 19; see Westbrooke v. Hyatt, 3 Ell. & B., 737; Hughes v. Lumley, 4 Ell. & B., 685.

(2) Leinfesty v. Bennett, 9 L. C. R., 298.

(3) Grenier v. Chummond, 5 L. C. J. 78.

(4) Doe d. Kerr v. McCall, 3 Ell. 194.

(5) Doe d. Simpson v. Falls, 5 Allen, 540.

deed registered before date of execution violates registry. stored conveyance, appeared from the certificate endorsed upon it to have been registered before it was proven; held, that it did not operate as a sufficient registry, and that the deed was improperly admitted in evidence (1).

Certificate *prima facie* evidence of party registry. The certificate under the corresponding section of the Registry Act of 1795 (2) was held to be *prima facie* evidence only of registry, and not to be taken as incontrovertible evidence of the fact so as to exclude all proof to the contrary (3).

But not only of best evidence. Although the certificate was made evidence of the fact of registry under the Registry Act of 1795, it was not considered as the only evidence, nor the best. The production of the Book of Registry, in which a memorial of a deed affecting the title is recorded, is good evidence of the title being a registered title (4).

Registry Book a good evidence. The production of the Registry Book in which a memorial is recorded is good evidence of such registry (5).

Certificate open to rebuttal. The certificate is only *prima facie* evidence; it may be rebutted (6).

Certificate conclusive in New Brunswick. In New Brunswick the certificate is held to be conclusive that the person signing it is the Registrar (7).

New Brunswick. When an instrument requires registration, the mode of proving such registration, of course depends upon the terms of the particular statute in force at the time when such instrument is registered.

General certificate. As a general proposition, however, the cer-

(1) Doe d. Blair v. Ridout, 3 Allen, 512.

(2) Sec. 5.

(3) Doe d. McLean v. Manahan, 1 U. C. R., 491.

(4) Doe d. Brennan v. O'Neill 4 U. C. R., 8.

(5) Doe d. Prince v. Girty, 9 U. C. R., 41.

(6) Doe d. Rennick v. Armstrong, 1 H. & B. app. 727; Doe d. Sullivan v. Walsh, Jones, 264.

(7) Doe d. Robinson v. Shassey, 1 Hannay (N. B.) 50.

certificate endorsed upon the original instrument, or a duplicate copy thereof, and delivered to the party entitled to such instrument, will be evidence both of the fact and date of registration, without it being necessary to prove further the signature or official character of the person signing such certificate (1).

The certificate referred to in this section cannot be made the subject of charge (2).

60. Every page of the Registry Book, and every instrument entered therein shall be numbered, and the certain year, month, day, hour and minute of registration shall be entered in the margin of the Registry Books, in the form of Schedule H to this Act; and such entry shall be signed by the Registrar or his Deputy. 31 V. c. 20, s. 56.

The Registry Act of 1846 required the numbering of the Registry Book and the instruments entered therein, but did not require any marginal entries to be made as above, nor did the Registrar or Deputy under that Act sign any memorandum in the margin. Marginal entries to be signed by the Registrar or his Deputy were first required by the Registry Act of 1865 (3).

(1) Doe v. Lloyd, 1 M. & G. 684-685.

(2) Keele v. Ridout, 5 U. C. R., 240 and see sec. 95, ss. 5 post.

(3) Sec. 54.

is evidence of fact and date of registry. Unnecessary to prove signature or office of party signing.

No fee allowed for certificate. Pages and instruments to be numbered.

CHAPTER IX.

HOW VARIOUS INSTRUMENTS ARE TO BE REGISTERED.

- §61. Crown grants.
- §62. Orders in Council.
- §63. Wills.
- §64. Other instruments.
- §65. Instruments executed before 1st Jan., 1866
- §66. Proof of Registration of do. do.
- §67. Discharges of Mortgages.
- §68. As to release of part.
- §69. Discharges of mortgage by married women.
- §70. Discharges of mortgage before 19th Dec., 1868 confirmed.
- §71. Discharges of mortgages by Sheriffs &c.
- §72. Residence &c., of witness not necessary in attesting clause.
- §73. (1) By-laws hereafter made affecting real estate. (a) as to By-laws &c., heretofore made.

CROWN GRANTS.

Crown Grants. 61 Grants from the Crown shall be registered by producing such grant or an exemplification thereof to the Registrar, with a true copy sworn to by any person who has compared the same with the original; and such copy shall be filed with the Registrar. 31 V., c. 20, s. 34; 40 V., c. 7, *Sched. A* (128).

Not registered before Reg. Act of 1866. Grants from the Crown were not admitted to registration in the County Registry Offices prior to the passing of the Registry Act of 1865 (1). A list or memorandum of such Grants was, however, furnished by the Provincial Registrar to each Registrar, at stated periods, showing date of issue, name of patentee, and a short description of the land mentioned therein.

What can be registered before patent Before patent from the Crown the only instruments capable of registration in the Registry Office are such as create a mortgage, lien or incumbrance upon the lands (2).

(1) Sec. 35.

(2) *Holland v. Moore*, 12 Gr., 296; see *Rev. Stat. (Ont.) cap. 25 sec. 26*; *Casey v. Jordan*, 5 Gr., 467; *Vance v. Cummings* 13 Gr., 25.

Assignments or transfers of such land prior to issue of patent, in order to retain priority, must be filed with the Commissioner of Crown Lands, with affidavits of the due execution thereof, showing the time and place of execution, and the names, residences and occupations of the witnesses; the Commissioner registering the same in a Registry Book kept for that purpose, and endorsing on each assignment a certificate of the registration thereof. It is necessary, however, that the assignment shall be unconditional; and that all the conditions of sale, grant, or location should be complied with prior to such registration being made. Should the witness have died or left the Province, an affidavit proving such death or absence, and the handwriting of such witness, or that of the party executing the assignment, must be produced in order to permit of registration. Express notice of an unregistered assignment of unpatented land has the same effect, as like notice of an unregistered conveyance after patent (1).

How other instruments filed before Patent.
Commissioner of Crown Lands.
See "The Public Lands Act."
R. S. Ont. cap. 23, s. 17, et seq.
Assignment must be unconditional.
Proof of execution if witness dead or absent from Province.

The Registry Acts of 1865 and 1868 (2) did not provide for the registration of exemplification of patents. Exemplifications were made capable of registration by 40 Vic., cap. 7, *Sched. A*, (128). A form of the affidavit required under this section will be found in Appendix A.

Exemplification can be registered by 40 Vic., c. 7, *Sched. A*, (128.)

ORDERS IN COUNCIL.

62. Orders of the Governor General in Council, or of the Lieutenant-Governor in Council may be registered in the Registry Office of the County or other Registration Division in which any land to which the Order in Council relates is situate, by the deposit of a copy of the Order, certified by the Clerk of the Council. 40 V., c. 8, s. 40.

Orders in Council.

Under numerous statutes, Orders in Council

Orders in Council

- (1) *Goff v. Lister*, 13 Gr., 406, 14 Gr., 451.
- (2) Sec. 34.

under 38
Vic., (D.),
cap. 13.

Intestate.

40 Vic.,
(Ont.),
cap. 8.

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ernor in
Council"
applies
only to
Ontario.

Order in
Council of
other
Provinces
not within
section.

Provable
under sec.
38 ante.

Wills.

affecting real estate may be passed by the Governor-General in Council, or the Lieutenant-Governor in Council. Under 38 Vic., (D) cap. 13, where any security upon real estate held by the Crown is satisfied, the Governor-General may, by Order in Council declare such security to be satisfied; a duly certified copy of such Order in Council operating as a release of such security of any claim held by the Crown. Real estate of an intestate dying without any known relative in this Province, may be sold or disposed of by Order of the Lieutenant-Governor in Council.

It was not until the passing of the 40 Vic., cap. 8 (1), that any provision was made for the registration of such Orders in Council.

The words "Lieutenant-Governor in Council" refer solely to the Lieutenant-Governor of the Province of Ontario, acting by and with the advice of the Executive Council for Ontario. Orders of any Lieutenant-Governor in Council of another Province are therefore excluded from the operation of this section. Apart from the question as to whether such foreign orders in Council affecting land situate in this Province are capable of registration as "instruments affecting lands," it is submitted that any such order would have to be proved under section thirty-eight *ante* in like manner as other instruments, not especially excepted by that section.

WILLS.

63. Every will shall be registered at full length by the production of the original will, and the deposit of a copy thereof, with an affidavit sworn to by one of the witnesses to the will, proving the due execution thereof by the testator, or by the production of probate or letters of administration with the will annexed, or an exemplification thereof, under the seal of any Court in this Province, or in Great Britain and Ireland, or in any British Province, Colony, or Possession, or in any foreign country

(1) Sec. 40.

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having jurisdiction therein, and by the deposit of a copy of such probate or letters of administration, with an affidavit verifying such copy. 31 V., c. 20, s. 35; 39 V., c. 25, s. 2; 40 V., c. 7, *Sched. A*, (129)

Originally wills were registered through a memorial under the hand and seal of some or one of the devisees, his or their heirs, executors, administrators, guardians or trustees, attested by two witnesses, one of whom should prove the execution of the memorial (1). It was not necessary that the execution of the will itself should be proved by a subscribing witness, except in the case of a will executed out of the County (2). The memorial of the will under that Act was not required to contain any greater particularity of the contents of such will, than was necessary in a memorial of a deed.

The Registry Act of 1846 (3) required that when the will was executed in the Province, but out of the County where the lands affected were situated, the witness proving the execution of the memorial should also be one of the witnesses to the will, and should prove the execution of such will, and the place where the same was executed; and when executed out of Upper Canada, the witness, in an affidavit to be taken before one of the officials therein referred to (4) was required to swear to the making and publishing of the will. But the memorial in each case was not to be registered unless it was identified as that referred to in the affidavit, by a certificate under the hand of the person before whom the affidavit was taken, which certificate had to be endorsed upon the will or probate.

Registration at full length of all instruments

- (1) Reg. Act of 1795, sec. 4.
- (2) Sec. 13.
- (3) Sec. 9.
- (4) Sec. 10.

necessarily led to a change being made in the former method of registration of wills.

Registration at full length under Reg. Acts of 1865 and 1868.

The Registry Acts of 1865 (1) and 1868 (2) provided, as at present, that the will should be registered in full, by production of the original and a deposit of a copy with an affidavit of one of the witnesses, proving due execution by the testator, or by the production of the probate or letter of administration with the will annexed under the seal of any Court of this Province, Great Britain and Ireland, British Province, Colony or Possessions having jurisdiction therein, and the deposit of a sworn copy thereof. Prior to these enactments it

Certified copy of foreign probate equivalent to letters probate.

Exemplification of Probate, &c., admitted to registry by 39 Vic., c. 25.

Exemplification of foreign probates by 40 Vic., c. 7, s. A.

Devises must be in writing.

What affidavit should contain.

was held, that a certified copy of a will, duly proved in a Court in Lower Canada, was equivalent to letters probate in Upper Canada and could be registered (3). Production of an exemplification of probate or of letters of administration with the will annexed was included by Stat. 39 Vic., cap. 25 (4) while probates, letters of administration with the will annexed, and exemplifications thereof under the seal of any Court in any foreign country were admitted by Stat. 40 Vic., cap. 7, *Sched. A*, (129.)

It is enacted by the "Statute of Frauds" (5) that all devises and bequests affecting lands "shall be in writing."

The affidavit should properly set forth the manner in which the will is executed, as the mode of executing wills according to law, has been altered from time to time by various enactments. The validity of wills depends, to a very large extent.

(1) Sec. 36.

(2) Sec. 35.

(3) *Patulo v. Beyington*, 4 U. C. P., 125.

(4) Sec. 2.

(5) 29 Car., II, cap. 3, sec 3.

upon their being executed in conformity to the statutory provisions regulating the same.

It is but proper that the manner of execution should be set forth with reasonable detail: not only that the Registrar should, upon consulting the affidavit, see that the will is "duly executed" in accordance with the laws in force at the time of its execution, but also that parties interested in the establishment or setting aside of such will may obtain the necessary information as to the mode of its execution.

It is to be regretted that the Registry Act is not explicit upon this subject, and that proper and appropriate forms are not furnished in the Schedules thereto; as the common custom of stating that the witness did see "the will duly executed" without more, conveys no information whatever.

In the case of a testator, who is blind or who is a marksman, it may happen that the will may never have been read over to him, or if read, not comprehended by him; or the testator may not have executed the will in the presence of the witness; or the witness on the other hand may not have attested and subscribed the will in the presence of the testator; yet notwithstanding all this, upon an affidavit, stating that the will was duly executed, made by one of the witnesses ignorant of what constitutes a "due execution" of a will, the instrument is registered and a certificate of such registration endorsed thereon. There is nothing to show that the testator is dead.

The affidavit should be as full and clear as that required by the Surrogate Court in proving a will.

The admission to registration of probate and administration with the will annexed.

registry
correct in
principle.

or of an exemplification thereof, by means of sworn copies thereof, is correct in principle, and consistent with requiring due proof to be made of the will of which it is a probate, as the case may be, as probate and letters of administration are only granted upon proof of the execution of the will, according to the laws in force at the time of its execution.

But affidavit stating due execution of the deed" allowed.

Objection having been taken to the sufficiency of the affidavit of execution by the attesting witness in the memorial to a deed registered under the Registry Act of 1846 which stated that the witness had seen "the due execution of the deed," Esten V. C. remarked:—"If the matter was *res integra*, I should be strongly disposed to think that it was not sufficient for the affidavit to state that the witness had 'seen the due execution of the deed.' I should have thought that it should describe the act performed, as in an ordinary affidavit of execution, so as to enable the Registrar to judge of its sufficiency. But in this respect the affidavit follows the form prescribed by the Act of Parliament—it is probably a form commonly used—the affidavit is not the act of the party, but of a witness; and it is a matter transacted between the witness and the Registrar, not intended for the information of the public, but for the satisfaction of the Registrar. It would be, perhaps, not too much to hold that all the provisions respecting the proof are directory" (1).

Provisions of Act as to proof directory.

So held under the Irish Act.

Reid v. White-

Under the Irish Act it has been held that the provisions therein as to the forms of affidavits of execution are directory, not mandatory (2).

It is to be remembered, however, that the cases

- (1) Per Esten V. C., *Reid v. Whitehead* 10 Gr., page 449
(2) *McDonell v. Murphy*, 2 F. & S. 304.

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alluded to, refer only to affidavits of the execution of deeds, and not of wills. It is also worthy of notice that section thirty-eight *ante*, which states clearly what the affidavit of execution should state, referring to a form of such affidavit contained in Schedule E to this Act, expressly *excepts* wills from the operation of that section.

If the ruling in *Reid v. Whitehead* is applicable to wills, there is no reason why wills should have been excepted from section thirty-eight; as the statement in the affidavit that the witness had seen the will duly "signed, sealed and executed, etc.," would, according to that ruling, be sufficient. It is submitted that, owing to the impossibility of having one form of affidavit which would be applicable to the case of every will, and having regard to the various changes in the mode of execution of wills, the Legislature intentionally omitted allusion to affidavits in the case of wills from that section, and that *Reid v. Whitehead* does not apply to cases of registration of wills.

In order then to ascertain if there has been "due execution" of a will, it will be important to glance briefly at the statutes affecting the execution of wills, which are three in number, viz., the Statute of Frauds, the Act 4 Wm. 4, cap. 1, and the Wills Act of 1873.

The fifth section of the Statute of Frauds (1), enacted that all devises and bequests affecting lands should be in writing, signed by the testator, or some one in his presence, and by his express direction, and should be attested and subscribed in the presence of the testator, by three or four

(1) 29 Car. II. cap. 3.

credible witnesses; otherwise such wills should be deemed utterly void and of none effect.

Under
3 Wm. 4.
cap. 1.

The above was the mode of execution applicable to all wills executed prior to the sixth day of March, 1834; and all wills executed prior to that date must be executed in accordance therewith, unless republished as hereinafter mentioned.

By the Provincial Statute 4, Wm. IV, cap. 1 (1), it was provided that any will executed after the sixth day of March, 1834, in the presence of, and attested by two or more witnesses should have the same validity and effect as if executed in the presence of, and attested by three witnesses; and it should be sufficient if such witnesses subscribed their names in the presence of each other, although their names might not be subscribed in presence of the testator.

This statute applies to all wills executed between the sixth day of March, 1834, and the first day of January, 1874, if not republished as hereinafter referred to.

Changes
affected by
latter
Statute.

It was held, that this Act did not repeal, but merely extended the Statute of Frauds. The changes effected by this statute in the mode of execution under the Statute of Frauds were only two in number; namely, that two witnesses were deemed sufficient instead of three or four; and that the witnesses were allowed to subscribe their names in the presence of each other, though they did not subscribe in the presence of the testator (2).

Did not
repeal the
Statute of
Frauds.

It was held, that the fifth clause of the Statute of Frauds was not repealed by the statute 4 Wm. 4, cap 1, but extended; and that a will subscribed

(1) Sec. 51.

(2) *Crawford v. Curragh, et. al.*, 15 U. C. P., 55.

by witnesses according to the requirements of either statute was sufficiently executed (1).

Both of these statutes, so far as they related to wills, were repealed by "The Wills Act of 1873" (2), which, as to all wills executed since the first day of January, 1874, enacts (3), that no such will shall be valid unless it is in writing and executed in manner following, that is to say, it shall be signed at the foot or end thereof, by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest, and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary. Provided, always that every will so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, shall be deemed to be valid, within the meaning of this Act, if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will, etc., etc.

The provisions of this Act extend to any will executed prior to the first day of January, 1874, which is re-executed or republished or renewed by a codicil since that date: every such will being for the purposes of the Act deemed to have been made at the time at which the same shall be so re-executed, republished or renewed (4).

(1) Ib.

(2) 36 Vic., cap. 2; Rev. Stat. (Ont.), cap. 106.

(3) Sec. 12.

(4) Sec. 7.

Former Acts repealed by the Wills Act of 1873.

Made of execution thereunder

The Act extends to wills executed prior thereto if re-extended or re-published.

Prior to Reg. Act of 1865.

Devisee registering will should be a legal Devisee.

devisee also a witness.

Testator must be dead at time of registration.

Probate proof of death execution.

But not of due execution to pass real estate.

Other instruments.

Prior to the Registry Act of 1865 memorials of wills were required to be under the hand and seal of the devisee, or of one or more of the devisees, his or their administrators, guardians or trustees. It was essential, however, that the devisee executing the memorial should be a legal devisee.

Where the devisee who executed the memorial was also a witness to the will, it was held that the devise to him being thereby void under 26 Geo. II. cap. 6, he had lost his character of devisee; and that the registry of a memorial signed by him as devisee was ineffectual (1).

It is hardly necessary to observe that no document, purporting to be the will of a living person can be registered, as it is not a will until after publication thereof; and publication cannot take place until upon the decease of the testator. The Registry Act of 1865 (2) and Con. Stat. U.C. cap. 89 (3), distinctly affirm that the testator must be dead.

A probate is evidence not only of the execution of the will, but also proof of the death of the testator (4).

It has been held, however, that a probate, though registered is not evidence of a due execution of the will, so as to pass real estate (5). Forms of affidavits of execution of wills are contained in Appendix A.

OTHER INSTRUMENTS.

64. All instruments, other than grants from the Crown, and wills, shall be registered by the deposit of the original instrument, or by the deposit of a duplicate or other original part thereof with all the necessary affidavits. 31 V., c. 20, s. 34.

(1) *Ryan v. Levermore*, 26 U. C. R., 100.

(2) Sec. 6.

(3) Sec. 1, c. 8.

(4) *Davis et al. v. VanNorman*, 30 U. C. R., 437.

(5) *Hamilton v. Love*, 2 Kerr 243.

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(1) *Cruise J.*, in *Laws* (2) *Kerr* (3) *Per H* C. R. p. 243 (4) *McA*

The words "Order in Council" should have been inserted in the section after the word "Crown."

A deed is deemed "registered" in contemplation of law when it is entitled to registration and (b) is deposited with the Registrar in his office for that purpose (1).

The registration of an instrument not properly authenticated as the law requires, or not directed or authorized by law to be registered is of no avail (2). Parties cannot, by voluntarily registering an instrument not required to be registered, draw to their acts consequences provided by the Legislature for another state of things (3).

Where a mortgage was registered at full length, and the duplicate original was lost or mislaid, in an action brought against the mortgagor upon the covenants contained in such mortgage by the administrator of a deceased mortgagee, the defendant pleaded his readiness and ability to pay the mortgage upon maturity upon production of the duplicate original or upon proof of its loss. It was held, that the plea was bad; for it must be assumed that the mortgage was recorded at length, and that under the Registry Act the defendant would be fully protected on payment of the mortgage, and recording the discharge (4).

INSTRUMENTS EXECUTED BEFORE 1st JANUARY, 1866.

65. The registration of all instruments executed before the first of January, one thousand eight hundred and sixty-six, may be made through memoranda or by certificate or otherwise, as provided by the law in force prior to the Registry Act passed in the year one thousand eight hundred and sixty-five. 31 V.c. 20, s. 36.

Upon the passage of the Registry Act of 1865, Jan., 1866.

(1) Cruise Greenleaf vol. 2, p. 445. See remarks of Harrison C. J., in Lawrie v. Macmillan, 38 U. C. R. 255.

(2) Kerns v. Seay, 1 Watts 75.

(3) Per Burns J. In re Kingston B. Society v. Rainsford, 10 U. C. R. p. 242.

(4) McAuley v. Doyle, 35 U. C. P., 239.

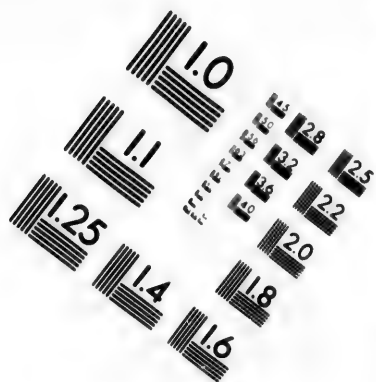
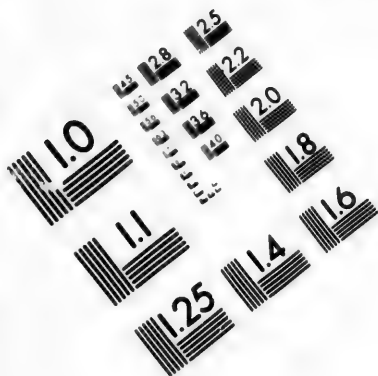
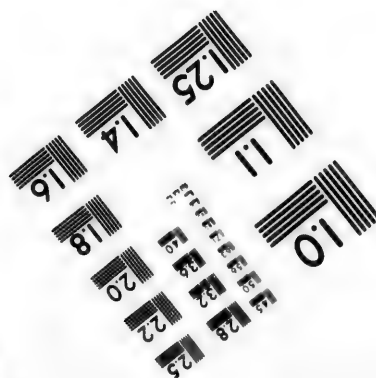
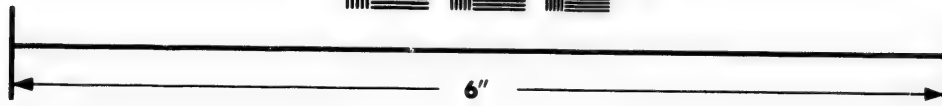
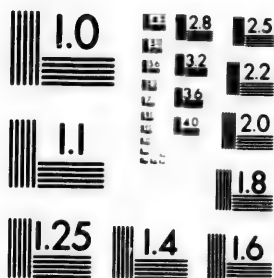


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which effected such a complete alteration in the mode of registry, to come into operation on the first of January, 1866, it was considered expedient to refer to such instruments as should have been executed prior to that date, but not presented for registry; and to make express provision for the registration of such, in order to remove any doubt that might arise in the absence of such special reference.

Provided
for by Reg.
Act of
1865.

Which
however
did not
apply to
proof.

By that Act (1) it was provided that the registration of instruments in full, should take effect on and after the first day of January, 1866, and "that until such time the Registration of all instruments which may be registered under the laws now in force shall be made in like manner through memorials or by certificates or otherwise as heretofore provided; and all the Acts and parts of Acts relating thereto, and which are intended to be repealed when this Act shall come into force, shall continue and remain in full force until the said first day of January next."

Reg. Act
of 1868.

The thirty-sixth section of the Registry Act of 1868, from which section sixty-five is taken, in effect re-enacted the above section of the Registry Act of 1865.

Memorials
and certif-
icates.

The section speaks of the registration of the instruments referred to "through memorials or by certificates or otherwise." The certificates here alluded include, for example, such certificates as are granted by the Sheriff upon executing a deed for taxes under 4 Geo. IV cap. 7, ss. 19 & 20; 16 Vic. cap. 182, ss. 65 & 66 (2).

Registra-
tion prior

The consideration of the method of registering through memorials etc., from January 1st 1866,

(1) Sec. 37.

(2) See notes to sec. 76 *post*.

is contained in the remarks upon the following section to which it more properly pertains.

66. The proof that would before the first day of January, one thousand eight hundred and sixty-six, have been sufficient for the registration of any instrument executed prior to the said date, shall be deemed sufficient for the registration hereafter of any such instrument; but in any such case the instrument shall be executed at full length, and the memorial and affidavit shall be deposited and filed in lieu of an original or duplicate, 31 V. Jan. 1866, c. 20, s. 37.

As instruments executed prior to the first of January, 1866, unless proved according to the present Act, cannot be admitted to registration without proof being made, in accordance with the law as it existed prior to that date, it is important to refer to the several statutes bearing upon this subject, and the principal cases decided as to the construction and operation of those statutes. As the statutes affecting registry are contained in Appendix D., it will be sufficient to state briefly the requisites of such proof; the sections of the various statutes bearing thereon being cited, so that the reader may refer thereto for more extended information.

According, then, to the registry laws in force in this Province, prior to the first of January, 1866, instruments executed before that date may be registered upon the following proof, viz:—

1. Deeds, conveyances, assurances, Powers of Attorney and wills, are to be registered through memorials (1).

2. Sheriff's deeds for taxes. Proceedings in the Court of Chancery, and discharges of mortgage, by certificate (2).

3. Memorials must be in writing, or be partly printed and partly written (3).

- (1) Con. Stat. U. C., cap. 89, sec. 18.
- (2) Ib.
- (3) Sec. 19.

Instruments executed before Jan. 1, 1866, may be registered as follows:

Deeds, &c., through memorials.

Sheriff's deeds, &c., by certificates.

Memorial to be in writing or partly printed.

Contents
of memor-
ials.
Names,
&c., of
witnesses

4. They must contain the date of the instrument, as well as the names and additions of all the parties to the instrument, or of the deviser, testator or testatrix of the will, as set forth in the instrument or will (1).

Descrip-
tion of
lands

5. They must mention the names and additions of all the witnesses to the instrument or will, and of their places of abode respectively (2).

6. They must also mention the lands contained in the instrument or will, and the City, Town, Township or place in the County or Riding, where the lands are situate, in the manner in which the same are described in the instrument or will, or to the same effect (3).

Who to
execute
memorial.

7. The memorial of an instrument, other than a Power of Attorney, is required to be under the hand and seal of the grantor, or of one or more of the grantors, or of the grantee, or of one or more of the grantees, his or their heirs, executors, administrators, guardians or trustees; and attested by two witnesses, one of whom is to be a witness to the execution of the instrument (4).

Memorial
of Power
of Attor-
ney

8. That of a Power of Attorney is to be under the hand and seal of one or more of the constituents, or of the constituted and attested by two witnesses, one of whom shall be also a witness to the Power of Attorney (5).

Memorial
of Will.

9. The memorial of a will is to be under the hand and seal of the devisee, or of one or more of the devisees, his or their executors, administrators, guardians or trustees, and attested by two witnesses, one of whom, in case of wills, made and

(1) *Ib.*, ss. 1.

(2) *Ib.*, sec. 19, s. 2.

(3) *Ib.*, sec. 19, s. 3.

(4) *Ib.*, sec. 20.

(5) *Ib.*, sec. 21.

published out of Ontario, shall be also a witness to the will (1).

10. The affidavit accompanying the memorial differs according to the nature of the instrument to be recorded. Affidavit of witness

(a.) The affidavit accompanying a memorial of an instrument, other than a will, must be made by one of the witnesses to the memorial, who is also a witness to the execution of the instrument and memorial. Instru-
ment
other than
a will.

(b.) In the case of a will executed in Ontario, the affidavit is made by one of the witnesses to the memorial proving the execution of the memorial and place of execution. If will ex-
ecuted
within the
Province.

(c.) When the will is executed out of Ontario, the affidavit must be made by one of the witnesses who is a witness also to the will and memorial who shall prove the execution of the will and memorial (2). If will ex-
ecuted out
of Pro-
vince.

11. Proof made out of Ontario may be either by affidavit or declaration in writing, but in such case the memorial shall not be registered, until the instrument be identified as that referred to in the affidavit or declaration by a certificate of identity endorsed on the instrument under the hand of the party before whom the affidavit is sworn (3). How proof
made

12. When the witnesses being dead or permanently resident out of Ontario, proof of the execution of an instrument had to be made before the Justices of the Peace in Quarter Sessions assembled; and a certificate obtained, signed by the Chairman and certified by the Clerk of the Peace, setting forth that the majority of the Justices assembled Proof in
case of
death or
absence of
witness.

(1) *Ib.*, sec. 22.

(2) *Con. Stat. U. C.*, cap. 89, sec. 23.

(3) *Ib.*, ss. 25 & 26.

were satisfied by the proof adduced. In this case the deed and such certificate are to be registered.

Decrees of
foreclos-
ure, &c

13. Sheriff's deeds of land sold for taxes may be registered upon the certificate of the Sheriff under his hand and seal of office, showing the name of the purchaser, sum paid, number of acres sold, the lot or tract of which they may form a part, the date of the Sheriff's deed and the certificate could comprise a schedule of any number of such deeds. The Registrar is to receive such certificate in lieu of a memorial, and on production of the Sheriff's deed, enter on record a transcript thereof, which shall be sufficient registry (1).

Sheriff's
Deeds for
Taxes.

14. Decrees of foreclosure and every other decree of the Court of Chancery and certificates of discharge of mortgage were registered in the same manner as they now are.

Statutory
provisions
as to me-
morial are
manda-
tory.

Duty of
Registrar.

The provisions of the statute as to what a memorial shall contain have been construed as mandatory in their nature and not directory (2).

It is the duty of the Registrar to see that the memorial conforms with the requirements of the statute (3). It is his duty also to reject the memorial and return it to the parties if a discrepancy exists between it and the deed in any of the required particulars (4). An application for a mandamus to compel him to receive an insufficient memorial will be refused with costs. The Registrar is not compelled to verify any statements in the memorial, other than those required by the

Insuffi-
cient me-
morial.

(1) *Ib.*, ss. 34 & 35. See notes to Sec. 76 *Post*.
(2) *Harding v. Carey*, 10, Ir. C. L. R., 140; *In re Monsell*, 2 Ir. Jur. (N. S.), 66.
(3) *Reg. v. Registrar of Middlesex*, 15 Q. B., 976; *Abbott v. Geraghty*, 4 Ir. Ch., 15.
(4) *In re Monsell*, 2 Ir. Jur. (N. S.), 66; *Sullivan v. Walsh*, 1 Jones, 264.

(1) *Gard*
2 E. & A.,
(2) *McD*
(3) *Mill*
435.
(4) *In re*
(5) *Har*
(6) *Wyn*
(7) *Har*
(8) *Abbe*

Act. The memorial need not go beyond the four corners of the deed (1). A variance between the instrument and the memorial, in particulars not required to be inserted in the memorial is not material so as to interfere with its registration (2). So if mere surplus matter be contained in the memorial, provided the memorial otherwise contains the requirements of the Act (3).

If the instrument and its memorial are both blank as to date of instrument, the registry will be valid; as the instrument is good at law without a date, and the memorial cannot be required to contain that which is wanting in the instrument (4).

Where there is any omission in the memorial of a material particular, but the same omission occurs in the instrument, the registration will not be invalidated (5).

A clerical error in a memorial will not vitiate registration unless it will mislead or frustrate the object of the Act (6).

A mortgage and memorial were executed on the 26th February, 1855, but by a clerical error the date in the mortgage was written as 1851. The memorial stated the date of the mortgage as 1855. The registration was held good (7).

It is presumed that the Registrar does his duty, and that the memorial corresponds with the deed in the statutory requirements (8). Reception of a

(1) *Gardiner v. Blesinton*, 1 Ir. Ch., 87; *Reid v. Whitehead*, 2 E. & A., 584, per *Hagarty J.*; *Sugden V. & P.*, 14 Ed., 731.

(2) *McDonnell v. Murphy*, 2 F. & S., 304.

(3) *Mill v. Hill*, 3 H. of L. Ca., 829; *Wyatt v. Barwell*, 19 Ves., 435.

(4) *In re Monsell*, 2 Ir. Jur. (N. S.), 66.

(5) *Harding v. Carey*, 10 Ir. Ch., 140.

(6) *Wyatt v. Barwell supra*; *Slator v. Slator*, 16 Ir. Ch., 488.

(7) *Harty v. Appleby*, 19 Gr., 205.

(8) *Abbott v. Geraghty*, 4 Ir. Ch., 15.

memorial does not prove its validity, or the fact of registration (1).

Registration of instrument at the risk of party registering. Omission of addition of witness.

The Registrar receives, files and enters in his books whatever is brought to him, at the peril of the party bringing it. The omission in the memorial of the christian name of the mortgagor's wife, who executed to bar her dower, was held to vitiate the registration (2). The omission in the memorial to mention the addition of the witness to the deed was held to be a fatal objection to the registration of the deed (3).

Omission of City, Town, &c.

If the City, Town, Township or place in the County or riding is not mentioned in the usual place in the deed, but only by way of recital, the memorial must nevertheless not omit mention of such, otherwise such omission will be fatal (4).

Memorial of a deed endorsed upon another and referring thereto for description of lands.

If the deed to be registered is endorsed upon another deed, and in mentioning the parcels of land conveyed, describes them as "the premises comprised in the within deed," it has been held, that the memorial must describe such lands as they are described in the endorsed deed, and state that the imported description is taken from the source referred to (5). A case in our Provincial Court of Error and Appeal has however, decided, reversing the ruling of the Court below, that when the memorial follows the description in the deed, the deed itself being operative, the registration thereof is effectual (6).

Where memorial follows description in instrument.

(1) *Doe d. Rennick v. Armstrong*, 1 H. & B. app., 733, per Downes, C. J.

(2) *Boucher v. Smith*, 9 Gr., 347.

(3) *Robson v. Waddell et al.* 21, U. C. R. 574. *Harding v. Carey*, 10 Ir. C. R. 140. *In re Jennings*, 8 Ir. Ch., 421. *O'Brien v. Tylee*, 1 Ir. Com. L. R. (N.B.) 647. 3 Ir. Jur. 345.

(4) *Stephenson v. Royse* 5 Ir. Ch., 401.

(5) *Reg v. Registrar of Middlesex*, 15 Q. B. 976. See form of memorial applicable to such a case in Appendix A.

(6) *Reid v. Whitehead*, 2 E. & A. 580.

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Where neither of the witnesses to the memorial was a witness to the deed, it was held, that, as the requirement of the Act in that respect had not been complied with, the registration was invalid (1) a memorial of a will was signed by a devisee named therein, who was also an attesting witness to the will. It was held that the devise being void under Act 25, Geo. II. c. 6, the registry of the will was ineffectual. (2)

Registration is confined to the lands mentioned in the memorial. If the latter omits any portion of the description of the lands as contained in the deed, such omitted part is not affected by such registration, and the deed acquires no priority in respect to the same (3).

When the executor of a mortgage affected to re-execute the mortgage deed for the purpose of registration, and caused his execution to be attested by two witnesses, neither of whom had previously attested the execution of a deed by any of the parties thereto; the registration was declared to be invalid (4). An affidavit of the witness, to accompany the memorial, been held not to be mandatory but directory, and the registration will not be avoided by the Registrar accepting an improper affidavit (5).

The witness to the instrument and memorial, must be the one who witnessed the execution of the instrument by the grantor, otherwise the registration is void (6).

(1) Doe d. Rennick v. Armstrong, 1 Had & Bro., app. 727.

(2) Ryan v. Deveraux, 26, U. C. R. 100.

(3) Crymble v. Adair Beat, 122, cfd. Johnston v. Dublin & Meath R. C. 17 Ir. Ch., 133

(4) Essex v. Baugh, 1 Y. & C., (C.C.) 620.

(5) McDonell v. Murphy, 2 F. & S., 304 per Burton J.

(6) Reid v. Whitehead, 10 Gr. 446, per Esten V. C. See In re Monsell, 2 Ir. Ch. (N. S.) 66.

Registration confined to lands mentioned in memorial.

Re-execution by executor for purposes of registration.

Provision as to affidavit of witness directory.

Reception of improper affidavit.

Who the witness must be

A Sheriff's certificate upon a sale of taxes and made in 1839, upon which a deed from him was obtained on 10th July, 1840, was not registered until 18th July, 1861, and written on it in the handwriting of "R." who was Sheriff in 1840, but had gone out of office before 1861, "Duplicate 1861" and on it the Sheriff was described as Sheriff of the United Counties of N. & D., which were not united until 1850. Held that these informalities were insufficient to destroy the registration. Per Wilson J.

The Sheriff who had sold the land and made the deed was held to be a competent person to give the certificate for registry, though out of office; and the Registrar having acted upon it, though he might, perhaps, have refused to do so, owing to its informality, the registration was ruled to be good (1).

Statement
as to place
of execu-
tion.

The Registrar having recorded a certificate of discharge of mortgage under Con. Stat. U. C. cap. 89, upon an affidavit which did not state the place of execution, as required by the statute; it was held, that he should have properly refused to register it, although being registered, it was effectual as a re-conveyance of the legal estate to the mortgagor (2).

Reg. Act
of 1865,
sec. 78;
Reg. Act
of 1868,
sec. 80
and sec. 41
first not
prospective.

Although by the Registry Acts of 1865 (3), 1868 (4) and the Act 36 Vic., cap. 17 (5), (the latter comprising section forty-one of this Act), by their retrospective operation have cured some of the defective registrations up to the dates of their several enactments, it must be borne in mind that

- (1) *Jones v. Cowden et al.* 34 U. C. R., 345.
- (2) *McGrath v. Todd*, 26 U. C. R., 87.
- (3) Sec. 78.
- (4) Sec. 80.
- (5) Sec. 2.

As
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such

they do not apply to registrations subsequent thereto; and that as to these subsequent registrations the greatest caution and care should be exercised in complying with the requirements of the law, as it has been decided in many instances that defective registration amounts to non-registration. The statutory requirements and cases cited above are therefore applicable to all instruments executed prior to the first of January, 1866, which have been registered since the remedial statutes came into effect, and especially to those that have not yet been registered.

Defective
registration
amounts
to non-
registration.

DISCHARGE OF MORTGAGES.

67. Where any registered mortgage has been satisfied, the Registrar, on receiving a certificate executed by the mortgagee, or if the mortgage has been assigned and such assignment registered, then executed by such assignee, or by such other person as may be entitled by law to receive the money and to discharge such mortgage, in the form of Schedule J to this Act, or to the like effect, executed in the presence of one witness, and duly proven by the oath of the subscribing witness thereto, in the same manner as herein is provided for the proof of other instruments affecting lands, shall register the same, and every affidavit attached thereto or endorsed thereon, at full length in its proper order, in the Registry Book, and shall number it in like manner as other instruments are required to be registered and numbered, and shall write in the margin of the register wherein the said mortgage has been registered, words to the following effect:—
“— See certificate purporting to be discharge signed by — (naming the person who has executed the same), and see Registry number — of such certificate — Book (stating the same according to the fact).” and to such marginal entry the Registrar or his Deputy shall affix his name; and the same shall be deemed a discharge of such mortgage, and such certificate so registered shall be as valid and effectual in law as a release of such mortgage, and is a conveyance to the mortgagor, his heirs, executors, administrators, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor. 31 V., c. 20, s. 60.

Entry in
margin of
register.

Effect of
such registration.

As a mortgage in fee transfers the legal estate in the lands conveyed thereby to the mortgagee, and his assigns; subject to the right of the mortgagor, upon payment of the money secured by, and the performance of the covenants contained in, such mortgage, to require a re-conveyance of the

Mortgage
transfers
the legal
estate.

lands and the legal estate therein, it would still be necessary to obtain such re-conveyance whether the mortgage be registered or not, but for the operation of this section.

Reg. Act
of 1795
silent as
to taking
dis-
charges.

Although there was a form of certificate of discharge of mortgage given in the schedule annexed to the Registry Act of 1795, yet there was nothing in that Act authorizing same to be taken, and no reference was made to the certificate. To remove doubts as to the legality of registration of such certificates the Act 4, Wm. IV., cap. 16, was passed; by which such certificates as had at that time been registered under the Reg. Act of 1795, as well as from that time henceforth, were declared to be valid as releases of mortgage, and to operate as a re-conveyance of the original estate of the mortgagor. The Registry Act of 1846, however, contained a similar provision to the section under consideration (1).

Reg. Act
of 1846.

Section
only ap-
plies to
"register-
ed mort-
gage."

The section is confined in its application to the case of "a registered mortgage." Where a mortgage is not registered but is satisfied, a re-conveyance in the form of a deed is yet required, in order to pass the legal estate in the mortgaged lands from the mortgagee to the mortgagor.

Practice
in Eng-
land as to
payment
of unreg-
istered
mortgage
by vendee
of mort-
gagor.

In the case of the payment of an unregistered mortgage, and neglect to obtain a re-conveyance from the mortgagee, it has been said that, in England the vendee from the mortgagor need not insist upon the registration of the mortgage and a re-conveyance from the mortgagee; because the legal estate which the mortgagor conveyed by the unregistered mortgage, ceased to be held by the mortgagee, upon the registration of the conveyance

(1) Sees. 23 & 24.

from the mortgagor to the vendee; and as he had been paid off, he, of course, retained no equity (1).

As in this Province, notice to the vendee of the mortgagor of such unregistered mortgage has the same effect against him as if such mortgage were in fact registered, and the legal estate would in such case remain undisturbed in the mortgagee, the rule above stated, it is apprehended, would not be applicable in this Province. Such vendee could either require the registration of the mortgage, and the execution and registration of a certificate under this section, or the execution of a reconveyance of the legal estate from the mortgagee to the mortgagor, or the vendee. The mortgagor, or any other party entitled to redeem, is not obliged to accept a statutory discharge of mortgage when he redeems the mortgage. He has the right to obtain, at his own expense and charges, from the mortgagee, or his assignee, a reconveyance of the mortgaged premises, including a covenant against incumbrances (2). If he redeems during the course of a foreclosure suit, brought upon the mortgage, he may, at his option, have a vesting order (3).

Nor does the statute apply to the case of certificates of discharge of mortgage executed by an assignee of a mortgage, unless the assignment itself be registered.

The provision in the section extending to the execution of certificates by assignees is expressly dependent upon the condition, "if the mortgage has been assigned and such assignment registered." No power is conferred upon an assignee

In Ontario mortgage must be discharged or a reconveyance had.

Discharge cannot be executed by assignee of mortgage unless assignment registered. Registration of assignment expressly required

(1) Sugden V. & P. 14 ed., p. 547.

(2) McLennan v. McLean, 27 Gt. 54.

(3) Ellis v. Ellis, 1 Chy. Cham. 257.

when assignee executes discharge. of a mortgage, which has not been registered and the form of the certificate in Schedule J. points clearly to the requirement of the registration of the assignment, the particulars of such registration being obliged to be set forth in as minute and full a manner as the particulars of the registration of the instrument itself.

If assignment of a registered mortgage is unregistered, assignee must either register assignment, execute discharge, or re-convey. Where the assignment of a registered mortgage has not been registered, the assignee, upon payment of such mortgage, must either register the assignment, and execute a certificate under the statute, or else he must execute a deed of re-conveyance; he not having the power to execute a certificate so long as the assignment remains unregistered. Where the assignment is unregistered the mortgagee could not properly execute such certificate, as the statute requires all assignments to be set forth in the certificate, with dates of registration, etc.

In such case the mortgagee cannot execute discharge. The expression "other person as may be entitled by law to receive the money and to discharge such mortgage," has reference to the legal representatives and assigns of the mortgagee, such as his executors, administrators, assigns in bankruptcy, trustees, etc. Discharges by Sheriffs, Bailiffs and other officers, are regulated by section seventy-one *post*. The mortgage being looked upon in equity as personalty, and not descending to the heir at law, the discharge thereof, in order to operate as such, must emanate from the personal representative, and not from such heir at law.

Power conferred upon executors and administrators. Authority to release mortgages belonging to a deceased mortgagee, and to re-convey the legal estate vested in such mortgagee, was conferred

upon executors and administrators by Stat. 12 Vic., cap. 71 sec. 9; Stat. 14 & 15 Vic., cap. 7 (1). and re-
Con. Stat. U. C., cap. 87, sec. 5, only authorized convey by
the executors to convey the legal estate on pay- 12 Vic.,
ment of the mortgage debt but not to a purchaser c. 71.
from them (2). The statute authorizing release 14-15 Vic.,
by execution upon payment of the mortgage debt, c. 87.
refers only to payment of the debt in money, and Limited
not to the acceptance of another security instead (3). effect of
cap. 87. C. S. U. C.,

Full powers to assign and release mortgages
were subsequently granted (4).

The authority to assign or release mortgages
does not extend to a foreign executor or adminis-
trator of the deceased mortgagee (5). Payment to
such foreign executor or administrator, and a release
executed by the heirs at law of the mortgagee, will
not be sufficient. The proper Surrogate Court out
of which letters of administration or probate should
issue, is the Court for the County in which the
mortgaged premises are situate.

Probate of a will granted to an executor in
England by the Courts there, does not entitle the
executor to act in that capacity in Ontario (6).

By the sixty-second section of the Registry Act
of 1868 it is provided that "every certificate of
payment or discharge of mortgage executed by the
mortgagee, his heirs, executors, administrators or
assigns, or any one of them shall be valid." This
provision is incorporated in the sixteenth section
of the Revised Statutes of Ontario, cap. 107.

(1) Sec. 8.

(2) Hunter & Farr *et al.*, 23 U. C. R., 324; Robinson v. Byers,
9 Gr., 572.

(3) Dilk v. Douglas, 16 W. C. L. J., (N.S.) 76.

(4) 32 Vic., cap. 10; R. S. (Ont.), c. 107, ss. 15 & 16.

(5) In re Thorpe, 15 Gr., 76.

(6) White v. Hunter, 1 U. C. R., 452. See Grant v. McDonald,
8 Gr., 468.

Power to
assign
granted by
32 V., c. 10.

Foreign
executor
cannot as-
sign.

Probate
granted in
England
no effect
here.

One of
several
executors
can exe-
cute a
valid dis-
charge.

Although it was at one time held that a certificate of discharge of mortgage should be executed by all the executors, in order to be valid (1), yet it has been held that, since the passage of the section just cited, one of several executors can alone execute a valid discharge of mortgage (2).

Assign-
ment by
adminis-
trator
need not
state his
acting as
such.

An assignment of a mortgage by an administrator is valid, although the assignment does not state that he executes the same in his capacity as administrator (3).

Discharge
of mort-
gage
though
registered
upon de-
fective
proof, op-
erates as a
re-convey-
ance of
legal es-
tate.

A Registrar having recorded a certificate of discharge upon a defective affidavit of execution, it was held that he should properly have refused to register it; but, having been registered, the certificate was effectual as a re-conveyance of the legal estate to the mortgagor (4).

Requisites
to validate
discharge
as a re-
convey-
ance.

In order to give effect to the certificate as a re-conveyance of the original estate of the mortgagor it is essential that there should be (a) payment, (b) execution of the certificate in the mode prescribed by the statute, and (c) registration (5).

Discharge
operates
as a re-
convey-
ance from
date of
registra-
tion

The certificate of satisfaction of a mortgage, or of the performance of the conditions therein, has effect as a release of the mortgage, or as a re-conveyance of the legal estate, only from the time that the registration of such certificate is completed, and has no relation back to the date of certificate. In this respect it differs from a conveyance or re-conveyance, under seal, of the legal estate to the mortgagor and his assigns; which, similarly to every

But a re-
convey-
ance by
deed from

(1) *McPhadden v. Bacon*, 13 Gr., 591.

(2) *Ex parte Johnson*, 6 P. R., 225.

(3) *Yarrington v. Lyon*, 12 Gr., 308.

(4) *Magrath v. Todd*, 26 U. C. R., 87, approved of in *Ryan v. Devereux*, 26 U. C. R., 100.

(5) *Ib.*

other deed, operates from the delivery, independently of registration (1).

A certificate of discharge of mortgage has no effect as a re-conveyance of the legal estate until registered, being, until such registration takes place, only evidence of payment (2). A discharge of mortgage, not being under seal, is not an estoppel as to the fact of payment (3). A discharge of mortgage, prior to registry, operates only as a receipt (4).

In *Lee et al. v. Morrow* (5), Draper C. J. observed that "the statutory certificate in itself and taken alone is only evidence of payment. It contains no words releasing the mortgagor from his covenants, nor conveying the lands to him; its force in these particulars is derived from its entry and registration in accordance with the Act." Where a certificate of discharge was executed under a Power of Attorney, which, after authorizing the attorney to sell the lands of the principal, and give receipts for the consideration money, empowered him, upon payment of all or any debts, to give proper and sufficient acquittances and discharges for the same; it was held, that sufficient authority was thereby conferred, to enable the appointee to sign the statutory certificate of discharge of mortgage (6). But an authority to an attorney or agent to receive payment of interest, due on a mortgage not in his possession, does not entitle him to receive payment of the principal (7). So an authority to collect rents, to contract for the

(1) *Sidey v. Hardeastle*, 11 U. C. R. 162.

(2) *Lee v. Morrow*, 25 U. C. R., 604.

(3) *Biglow v. Staley*, 14 U. C. P., 276.

(4) *Trust & Loan Co. v. Gallagher*, 8 P. R. 97.

(5) At page 610.

(6) *Ib.*

(7) *Palmer v. Winstanley*, 23 U. C. P., 586.

sale of property, and to receive the down payments thereon, does not entitle the agent to receive payments on a mortgage given for unpaid purchase money (1).

Discharge
valid
though
not exe-
cuted un-
til after
default in
payment.

It was at one time doubted, whether the certificate would operate as a discharge and re-conveyance, if not executed until after default had been made in the mortgage. This doubt was removed by the Registry Acts of 1865 (2) and 1868 (3), providing that every certificate of discharge of mortgage, or of the conditions therein contained, or of the lands or any part thereof, or of any portion of the money secured thereby, at whatsoever time given, and whether before or after the time limited by the mortgage for payment or performance, if in conformity with the Registry Act, should be valid to all intents and purposes. This provision is now contained in the sixteenth section of the Rev. Stat. (Ont.), cap. 107.

Regis-
trar's cer-
tificate of
registry of
discharge
is evi-
dence of
re-convey-
ance.

Entry of
dis-
charge in
Registry
Books,
evidence
of the
proper
form of
the dis-
charge,
latter not
being pro-
duced.

Semle that the Registrar's certificate, endorsed upon a mortgage, that the certificate of the discharge thereof is duly registered, is sufficient evidence of a re-conveyance, without proof of the execution of the discharge itself (4).

In an action by the vendors against the vendee it appeared that there were two mortgages upon the land, both of which had been paid off; an entry of the discharge of one of the mortgages had been duly made in the Registry Office; of the other a certificate of discharge had been duly signed, but not registered. It was held that from the entry by the Registrar, the certificate of discharge, which was not produced, must be

(1) *Greenwood v. the Commercial Bank of Canada*, 14 Gt., 40.

(2) Sec. 60.

(3) Sec. 62.

(4) *Doe d. Crookshank v. Humberstone*, 6 O. S., 103.

(1) Lee
(2) In
(3) Ib.
(4) Ho
18

assumed to have been in proper form, and in accordance with the statute; and as such entry had, by the statute, the force of a re-conveyance, the first mortgage could form no objection to plaintiffs' recovery (1). But the discharge of the second mortgage not having been registered, the legal estate remained in the mortgagee, so that plaintiffs could not recover.

It is necessary that there should be a separate certificate to every mortgage which is to be discharged. A Registrar therefore cannot be compelled to register a certificate applying to more than one mortgage (2).

It has been said that the omission in the certificate of the registration number of the mortgage is not an essential part of the certificate, to justify its rejection by the Registrar (3). In this case *Robson v. Waddell* was distinguished, upon the ground that the defect therein objected to was patent upon the face of the registry book.

The certificate, however, will not operate as a re-conveyance or discharge, if taken and registered under a misapprehension of the rights and equities of the person paying off the mortgage. Where a party paid off a mortgage, under the erroneous impression that he owned the equity of redemption, and took a discharge thereof; it was held that under the circumstances no legal estate passed (4).

In this case the equity of redemption had been sold under an execution at law and a conveyance thereof had been executed by the Sheriff, purporting to convey the same to the purchaser, who paid off the mortgage; but, neglecting to obtain an as-

Until registration of discharge the legal estate remains in the mortgagee.

Separate certificate required for each mortgage to be discharged.

Omission in discharge of the number of mortgage not fatal.

Discharge will not operate as re-conveyance if taken and registered under misapprehension as to rights of party paying off mortgage.

As where legal estate does not pass.

(1) *Lee et al. v. Morrow*, 25 U. C. R., 604.

(2) *In re Smith v. Shenston*, Reg. of Bruce, 31 U. C. R., 305.

(3) *Ib.*

(4) *Howes v. Lee*, 17 Gr., 459; see *Lee v. Howes et al.*, *post*.

Or when a
suitable
form of
certificate
is not
adopted.

assignment took instead, a statutory discharge, which he registered, and then went into possession of the property. The Sheriff's sale having been declared void, in consequence of the invalidity of the writ under which the Sheriff sold, the mortgagor brought ejectment against the purchaser: but an injunction to restrain such suit was granted upon the application of the latter.

The certificate, in this case, should have been given under the two hundred and fifty-eighth section of the Common Law Procedure Act (1), reciting that the purchaser had paid off the mortgage: instead of which the purchaser obtained the statutory form under the Registry Act then in force, which stated that the mortgagor had paid off the mortgage. It was held, that the taking of the latter form of certificate could not defeat the purchaser's title by vesting the mortgagor's estate in the mortgagor absolutely, but that it would operate to the benefit of the purchaser, as the assignee of the mortgagor (2).

Error in
name of
party pay-
ing off
mortgage
not ma-
terial.

A mortgage was held by an assignee for the benefit of the assignor, (the mortgagee,) and the mortgagor, without notice of such assignment, paid to the mortgagee the amount due on the mortgage, and obtained from him a discharge under the statute. Upon a bill filed by the assignee's representatives, who claimed the assignment to have been absolute, seeking to enforce payment of the mortgage by sale or foreclosure the Court declared that the mortgagor had acted *bona fide* in paying off, and obtaining a discharge of the security from the mortgage, and ordered the assignee's representatives to execute a release of

(1) Contained in Rev. Stat. (Ont.), cap. 66, sec. 36.

(2) *Lee v. Howes et al.*, 30 U. C. R., 292.

the mortgage; it being doubtful whether under the circumstances the discharge from the mortgagee would have the effect of revesting the property in the mortgagor (1).

A mortgagor, prior to his death, had paid about three-fourths of the mortgage money; and his widow, acting on behalf of his estate, paid the residue. The certificate of discharge, given four years after his death, stated that the mortgagor had satisfied the mortgage, and that it was therefore discharged, etc.; held, sufficient. *Seemle*, that it would have been sufficient, also, if the payee's name had been altogether omitted (2).

Payer's name may be altogether omitted

Registration of mortgage in full protects mortgagor in paying up and obtaining discharge.

In an action by the plaintiff, as administrator of a mortgagee, against the defendant as the mortgagor upon his covenants contained in a registered mortgage, the mortgagor pleaded upon equitable grounds that, before the instrument sued for fell due, the mortgagee informed the mortgagor that the mortgagee could not find the mortgage, and the mortgagor said he was prepared to pay when it fell due; that when he received notice of the suit, he notified the plaintiff's attorneys that he was prepared to pay on production of the duplicate copy, which had been held by the mortgagee, or on proof of the loss; and that he was and is so prepared, but plaintiff refused to show said copy or furnish any proof of loss. It was held, upon demurrer, that the plea was bad, for it must be assumed that the mortgage was recorded at length; no assignment had directly or indirectly, or by deposit, been averred; and under the Registry Act the defendant would be fully protected, on

(1) *McDonough v. Dougherty* 10 Gt. 42.

(2) *Carrick et al. v. Smith*, 35 U. C. R., 348.

payment of the mortgage and recording the discharge (1).

When re-conveyance will be presumed.

Where a mortgage has been paid off, but no re-conveyance, or certificate of discharge, has been executed, and the mortgagor has remained in possession many years, a re-conveyance will be presumed (2). Under the thirty-fifth section of "The Execution Act" (3) the interest of a mortgagor may be sold in execution, and the purchaser of such interest, upon paying up the mortgage, is entitled to receive from the mortgagee a certificate of discharge, in the form mentioned in the thirty-sixth section of that Act (4).

As to whether an action can be maintained against the party executing the certificate of discharge, upon the assertion contained therein on his part that he was "the person entitled by law to receive the mortgage moneys," if by the act or wilful default of the mortgagee or himself he were not so entitled, see the remarks of Proudfoot, V.C., in *McLennan v. McLean* (5). It is not absolutely necessary that the certificate should be in strict conformity to the form of Schedule J. to this Act. It will be sufficient if it be "to the like effect" (6).

For discharges of mortgage by purchaser of mortgagor's interest under execution, see sec. 71, *post*.

As to release of part only of lands mortgaged. Portion released to be described.

68. In case the mortgagee or any assignee of the mortgagee desires to release or discharge part only of the lands contained in such mortgage, or to release or discharge only part of the money specified in the mortgage, he may do so by deed or by a certificate to be made, executed, proven, and registered in the same manner as in cases where the whole lands and mortgage are wholly released and discharged; and such deed or certificate shall contain as precise a description of the portion of lands so released or discharged as would be necessary to be contained

(1) *McAulay v. Boyle*, 25 U. C. P. 239.

(2) *Collins v. Dempsey*, 14 U. C. R., 393.

(3) Rev. Stat. (Ont.) cap. 66.

(4) See form in Appendix A.

(5) 27 Gr., at p. 56.

(6) See in re *Smith v. Shenston*, Reg. of Bruce, 31 U. C. R., 305.

in an instrument of conveyance for registration under this Act, and also a precise statement of the amount or particular sum or sums, so released or discharged. 31 V. c. 20., s. 61.

Until the passing of the Act 14 & 15 Vic., cap. 7, when it was desirable to release a portion of premises under mortgage from the encumbrance created thereby, it was necessary to do so by deed, to be registered in the usual manner.

Prior to 14-15 Vic., c. 7, portions of mortgaged premises were released by deed.

By the eighth section of that Statute it was provided, that the executor or administrator of a deceased mortgagee might convey, release or discharge the mortgage debt and legal estate in the land, or any portion of the lands, in as effectual a manner as if such conveyance, release or discharge, had been made by any person having the legal estate.

Under the authority of that section it was decided, that a Registrar was bound to register or file a certificate of discharge of a portion of the lands comprised in a registered indenture of mortgage; although from a vague wording of the Registry Statutes then in force, the Court would not undertake to direct the Registrar to pursue any particular course as to mode of registry of such certificate (1).

Under that Act Registrar was obliged to register discharge of part of lands.

The discrepancy existing between that section, and the twenty-third section of the Registry Act of 1846, was remedied by the Registry Act of 1865, the fifty-ninth section of which corresponds with section sixty-eight of the present Act.

Discrepancy between that Act and Reg. Act 1846 removed by Reg. Act of 1865

Mortgagees and their assignees must be careful not to execute a release of part of the mortgaged premises if the residue is not of sufficient value to realize the mortgage security.

Caution in discharging part of lands.

A mortgagor conveyed part of the mortgaged premises to a purchaser, and covenanted against

When partial dis-

(1) In re Ridout, 2 U. C. P., 477.

charge ac-
cords with
mort-
gagee's
claim or
obligation.

incumbrances. The mortgagee subsequently re-leased the part so sold, from his mortgage. Held, that as the release was in accordance with the mortgagor's own obligation as to that part, it did not affect the mortgagee's right to recover the mortgage debt, or his lien on the rest of the mortgaged property (1).

When
mortgagee
by dis-
charging
part can-
not call on
vendee of
mortgagor
as to bal-
ance.

Where the mortgagee and mortgagor sold and conveyed part of the mortgaged property, without the concurrence of a person to whom, subsequently to the mortgage, the mortgagor had sold the remainder of the property, and whose interest was known to the mortgagee; and the mortgagee covenanted for freedom from incumbrances; it was held, that the mortgagee, having thereby put it out of his power to recover the whole of the mortgaged property, could not call on the owners of the remaining portion for payment of the balance of the mortgage money (2).

Rule does
not apply
to sale
under
Power.

Mort-
gagee's
right to
lien when
lost can-
not be re-
vived by
reconvey-
ance from
purchaser.
How far
partial dis-
charge af-
fects first
mort-
gagee's

This rule does not apply to a sale under a power of sale contained in the mortgage, the power having precedence over the rights of the vendee.

When the mortgagee's right to claim a lien on the unsold portion has thus been put an end to, it is not revived by his afterwards obtaining the consent of the first purchaser to a re-conveyance, on payment of the mortgage money (3).

First mortgagees with a power of sale released portions of the mortgaged property to the mortgagor. Held, that this did not give priority to a subsequent incumbrance with respect to the remainder of the property, but might render the

(1) *Crawford v. Armour*, 13 Gr., 576.

(2) *Gowland v. Garbutt*, 13 Gr., 578.

(3) *Ib.* See *Beck v. Moffatt*, 17 Gr., 601.

first mortgagees responsible to the second for the fair value of the parcels released (1).

69. Where any registered mortgage of lands wherein a married woman happens to be a mortgagee therein, or whereof the assignee is a married woman, has been satisfied, the Registrar, on receiving a certificate, in the form of Schedule J, annexed to this Act, or to the like effect and executed as hereinafter mentioned, shall register such certificate in the same manner as is provided by this married Act for registering other certificates of discharge of mortgage, and women such certificate shall be deemed a discharge of such mortgage to discharge the same effect as any other certificates registered under this Act, &c.

2. Any such certificate given between the 19th day of December 1868, and the 29th day of March 1873, shall be deemed to have been sufficiently executed if it has been executed jointly by such married woman and her husband; and from and after the 29th day of March, 1873, and after the passing of this Act, execution either jointly by the married woman and her husband, or pursuant to "The Married Woman's Real Estate Act," shall be deemed sufficient execution, and it shall not be necessary to produce any certificate of such married woman having been examined before any of the persons authorized by the laws in force between said dates touching her consent thereto in any wise. Rev. Stat. c. 9, s. 1; 36 V., c. 18, s. 3; see 34 V., c. 24, s. 5; 36 V., c. 18, s. 14. c. 127.

Under the Con. Stat. U. C. cap. 85, it was essential to the validity of any conveyance from a married woman affecting her real estate, that she should execute it jointly with her husband, and undergo an examination touching her consent, before a Judge of the Superior or County Courts, or two Justices of the Peace for the county where she resided or happened to be when she executed such conveyance; a certificate of such examination being endorsed upon such instrument. Requisites to conveyance by married women under C.S. U. C., c. 85.

Thus stood the law until the 19th December, 1868, when by Stat. 32 Vic., cap. 9, it was provided that mortgages of lands, wherein a married woman was mortgagee, or whereof she was an assignee, could be discharged in like manner and to the same effect as other mortgages could be discharged by a certificate executed jointly by her and her husband in the form provided for other discharges of mortgage, and that it How altered by 32 Vic. c. 9. Registration of do-

(1) The Trust & Loan Co. v. Boulton 18 Gr. 234.

fective dis- would not be in future necessary to produce any
charges by certificate of examination of such married woman
married touching her consent. By Stat. 34 Vic., cap.
women 24, sec. 6, discharges of mortgages by married
prior to 19th Dec., 1868, women, which were registered prior to the 19th
1868, December, 1868, executed jointly by a married
cured by 34 Vic., c24 woman and her husband, although defective in
wanting the certificate of examination were rendered valid and binding.

As to what is an execution by the married woman "jointly with her husband" see cases cited below (1).

Provision Under the provision of the "Married Woman's
of R. S. Real Estate Act" (2) a Judge of the Superior
(Ont.), ch. Courts, a Judge of the County Court, or a Junior or
127, "Mar- Deputy Judge, has the power in certain cases to
ried Wo- grant an order in the form given by that Act, dis-
man's pensing with the concurrence of the husband in
Real Es- any case where his concurrence would be neces-
tate Act,' sary, and allowing the married woman to convey
her real estate in the same manner, and with the
same effect, as if she were a *feme sole*. The order
may be registered in the Registry Office of the
Registration Division, where the lands affected are
situate, upon the production of such order and
deposit of the same without further or other proof
thereof, and such registration may take place
either before or after the execution of the deed
made in pursuance of its provisions (3), the regis-
tration fee being one dollar. It may, if desired,
be endorsed or written upon the instrument, in
which case it must be registered as part of the

Order dis-
pensing
with con-
currence
of hus-
band.

Reg. fee
on order.
Order may
be endor-
sed.

(1) See *Burns v. McAdam*, 24 U. C. R., 449; *Monk v. Farlinger*, 17 U. C. P., 41.

(2) Rev. Stat. (Ont.), cap. 127.

(3) Sec. 6.

deed, and no registration fee can be charged thereafter (1).

70. All certificates of discharge of mortgage and the register- All dis-
ing thereof, executed by married women or registered previously charges of
to the nineteenth day of December, 1868, according to the terms mortgage
of the Act passed in the thirty-second year of Her Majesty's before 19th
reign, and chaptered nine, shall be as valid and binding as if Dec. 1868,
done after the said date. 34 V., c. 24, s. 6. confirmed
32 V., c. 9.

A new departure having been taken to the
method of execution of instruments by married
women, it was appropriately provided, that all Remedial
discharges previously executed by married women effect of
should be valid and binding, if executed jointly this sec.
with the husband, although no certificate of exam-
ination or a defective certificate should have been
taken or endorsed, thus setting at rest many vex-
atious questions arising from some technical or
trifling non-compliance with the laws relating to
the former mode of execution.

71. When a Sheriff, Bailiff of a Division Court or other On pay-
officer, under a writ or warrant of execution against goods, seizure ment to
any mortgage belonging to the person against whose effects the the offi-
writ or warrant has issued, on or affecting land in the Province cer who
of Ontario, the payment with or without suit, in whole or in part, has seized
to such Sheriff, Bailiff, or other officer by the mortgagor or any a mort-
other person, of the mortgage money thereby secured shall dis- gage on
charge such mortgage to the extent of such payment. 38 V., execution
c. 17, s. 1. he may

2. After payment of such mortgage or any part thereof, the discharge
Sheriff, Bailiff or other officer shall, at the request and expense the same
of the person requiring the same, give a certificate in the form in whole
or to the effect of Schedule K, to this Act, under the hand and or in part
seal of office of such Sheriff or other officer, or under the hand
of such Bailiff, and the seal of the Court of which he is Bailiff. Form of
38 V., c. 17, s. 2. certificate

3. Upon the written request of such Bailiff, the Clerk of the of dis-
Court shall affix to such certificate, the seal of the Court; and charge,
he shall file the request of the Bailiff in his office. 38 V., c. 17,
s. 2.

4. The execution of such certificate shall be proved by the Proof of
same oath or affirmation, and in the same manner as is provided execution
by law for the proof for registration of other instruments affect- of certifi-
ing lands, and the certificate shall be registered in the same cate.
manner as other certificates of discharge of mortgages are regis-
tered. 38 V., c. 17, s. 3.

5. Every certificate so registered, if the same is of payment Effect of
in full of such mortgage, shall be as valid and effectual in law as certificate

(1) Secs. 7 & 8.

on pay- a release of such mortgage, and as a conveyance to a mortgagor, ment in his heirs, executors, administrators or assigns, or any person full as re- lawfully claiming by, through or under him or them, of the orig- convey- inal estate of the mortgagor, as if executed by the execution- ance of all. debtor. 38 V., c. 17, s. 4.

Effect as 6. Every certificate so registered, if the same is of payment reconvey- of only a portion of such mortgage shall be valid and effectual in- ance of law as a release of such mortgage as to such portion, as if exe- part, or cuted by the execution debtor. 38 V., c. 17, s. 5.

part pay- 9. The provisions of this section shall extend and apply to all- ment. cases in which the seizure or payment took place before, as well R. prospec- as since the twenty-first day of December, one thousand eight- tive opera- tion. hundred and seventy-four. 38 V., c. 17, s. 6.

This section provides for the discharge of mort- mortgages taken under an execution against the goods of the mortgagee or his assignee. Under the Execution Act (1), the Sheriff or other officer hav- ing the execution of a writ of *feri facias* against goods sued out of either of the Superior Courts of Common Law, or out of any County Court, is empowered to seize any mortgage belonging to the execution debtor, and to receive payment thereof from the mortgagor or other party liable thereon, and in case of default, to sue in his own name for the recovery of the money secured thereby. Similarly, under executions issued out of Division Courts, mortgages belonging to the execution debtor can be seized, but no provision was made prior to the Statute, 38 Vic., cap. 17, authorizing the Bailiff to receive payment of the mortgage moneys from the person entitled to redeem (2). Where the mortgage is seized under a Division Court execution, the Bailiff is not empowered to bring an action thereon, in case of default; the plaintiff, in that case, being at liberty to sue in the defendant's name, or in the name of any person in whose name the defendant might have sued.

Notwithstanding that payment of the moneys secured by the mortgages taken in execution as

(1) Rev. Stat. (Ont.), cap. 65, ss. 28 *et seq.*

(2) Rev. Stat. (Ont.), cap. 47, ss. 170 *et seq.*

Authority
of Sheriff
to seize
mortgages

Of Bailiffs

(1) V.
(2) S.
McCal
(3) I.
(4) S.

above, by the parties liable thereunder, would discharge such parties to the extent of their payments, upon the principle that the law will not compel a person to pay a sum of money a second time, where he has already paid it under the direction or compulsion of the Court (1), no provision was made, authorizing the Sheriff or other persons receiving the mortgage moneys, to execute either a re-conveyance of the original estate of the mortgagor, or a certificate of discharge, until the passage of the Act 38 Vic., cap. 17, the first six sections of which are re-enacted in the present section and its sub-sections.

Formerly no provision for discharge by Sheriff.

38 Vic., c. 17.

The seizure and sale, under execution, against lands, of the interest of a mortgagor in the mortgaged premises is regulated by "The Execution Act" (2), the effect of such sale being to vest in the purchaser of such interest, and his assigns, all the legal and equitable estate of the mortgagor at the time of the delivery of the writ to the Sheriff (3). The purchaser is entitled, upon payment by him to the mortgagee or his assigns, of the moneys due on the mortgage, to require the latter to execute a certificate of discharge in the form provided for in that Act (4), which certificate, upon registration, will have the effect of releasing the mortgage debt, and also of re-conveying the original estate of the mortgagor to the purchaser.

Sale of mortgagor's interest.

Certificate of discharge to purchaser.

The certificate of discharge executed by the mortgagee to the purchaser will not, however, operate as a re-conveyance or release of the mortgage debt, although registered, if taken and registered

When registered certificate will not operate as a recon-

(1) *Wood et al. v. Dunn*, L. R., 2 Q. B. 80 per Channel B.

(2) *Supra* sec. 35 *et seq.*; see *Fitzgibbon v. Duggan*, 11 Gr., 188; *McCabe v. Thompson*, 6 Gr., 175.

(3) *Pegge v. Metcalfe*, 3 U. C. L. J., 148. 5 Gr., 628.

(4) See form in Appendix A.

under an erroneous conception of the rights and equities of the party paying off the mortgage. The equity of redemption in mortgaged premises was sold under an execution at law, and a conveyance thereof was executed by the Sheriff, purporting to convey the same to the plaintiff, who was the purchaser, and who subsequently paid off the mortgage. He thereupon obtained from the mortgagee a statutory discharge thereof, which he registered, and then went into possession of the mortgaged property. In a proceeding at law, the Sheriff's sale was set aside, in consequence of the invalidity of the writ under which he had assumed to sell. The mortgagor having brought ejectment against the plaintiff to obtain possession of the mortgaged premises, it was held, that the plaintiff was entitled to an injunction to stay the action. The certificate of discharge was inadvertently given under the Registry Act, instead of under the Common Law Procedure Act, (incorporated in the Execution Act) and stated that the *mortgagor* had paid off the mortgage. It was held, that the taking of that form of certificate would not defeat the plaintiff's title by vesting the mortgagor's estate in the mortgagor absolutely, but that it would enure to the benefit and confirm the title of the plaintiff as the assignee of the mortgagor (1).

If mortgagee purchases.

If the mortgagee purchase the mortgagor's interest, he is required to execute in favour of the latter, a release of the mortgage debt (2).

Part interest of mortgagor.

It has been held that the interest of the mortgagor in a portion only of the mortgaged

(1) *Howes v. Lee*, 17 Gr. 459; see *Lee v. Howes et al.*, 30 U. C. R., 292.

(2) See *Woodruff et al., v. Mills*, 20 U. C. R., 51; *Stewart v. Clark*, 13 U. C. P., 203; *Smart v. Cottle*, 10 Gr., 59.

property cannot be sold under execution at law (1).

It will be observed that if the certificate of discharge under this section is to be executed by the Sheriff, it must be under his hand and seal of office; where it is to be executed by the Bailiff of the Division Court, it must not only be under his hand, but also under the seal of the Division Court of which he is bailiff. The seal of the Division Court must be affixed by the clerk, and must be preceded by the written request of the bailiff to that effect, which must be filed in the clerk's office (2). In either case the certificate of discharge must be attested and proved in the same manner as other certificates of discharge of mortgage are required to be.

The certificate of discharge under this section will only operate, upon being registered, as a reconveyance of the original estate of the mortgagor and release of the mortgage debt, where the whole of the mortgage moneys are paid.

Certificates of discharge on part payment of the mortgage moneys, operate only as releases of the mortgage debt *pro tanto*, and not as partial reconveyances of the mortgagee's estate. The marginal note to sub-section 6 is manifestly incorrect.

The interest of the mortgagee in the mortgage so taken in execution is bound only from the time of seizure, not from the time of the delivery of the writ to the Sheriff, &c. (3).

It is conceived that, from the absence of any statutory authority, the Sheriff, Bailiff, or other officer so effecting seizure of the mortgage, has no

(1) *He v. Wolfenden*, 14 Gr., 185; approved *Vannorman v. McCarty*, 20 U. C. R., 42.

(2) See Form of request, Appendix A.

(3) *Smith v. Bernie*, 10 U. C. P. 243.

power to assign the mortgage, or to execute a deed of reconveyance of the original estate of the mortgagor to the latter, or his assigns, or nominees.

Retro-
spective
effect.

By sub-section 7 this section is declared to have a retrospective operation. It has been doubted, whether the statute authorizing the sale and conveyance of the mortgagor's interest in mortgaged premises, under an execution against lands referred to *supra*, has a retrospective effect. ¹

See further as to certificates of discharge of mortgage, section sixty-seven. ²

Not to be
given in
attesting
clause.

72. It shall not be necessary that the residence or occupation of the attesting witness to any certificate of discharge of mortgage be stated in the attestation clause thereof, nor shall any such certificate, registered before the twenty-ninth day of March, one thousand eight hundred and seventy-three, be invalid or inoperative by reason of the omission to state in such attestation clause, the residence or occupation of any such attesting witness. 36 V., c. 17, s. 8.

Although the Registry Act of 1795 contained no provisions relating expressly to certificate of discharge of mortgage, a form of such certificate was nevertheless given in the schedule to that statute. In that form the place of residence of the witnesses to the execution of the certificate was required to be set out in the attestation clause. The form of the certificate in this respect remained unaltered, until, by the Registry Act of 1865 (2), the occupation of the witnesses had also to be stated in the attestation clause. The Registry Act of 1868 reduced the number of witnesses required to attest the execution of certificate, but still required the occupation of the witness to be set out. Certificates having been registered in some cases, where the residence and occupation of the subscribing witness or witnesses were inadvertently omitted.

(1) *Miller v. The Beaver Mutual Fire Insurance Association* 14 U. C. P. 399.

(2) Form I, in Schedule.

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s. 507.

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and it being doubted whether the same were valid, or operative as reconveyance of the legal estate, it was enacted by Stat. 36 & 37, cap. 17, sec. 8 (identical with this section), that the residence or occupation of the witness need not be stated in the attestation clause, and certificates registered prior to the passing thereof (1) were confirmed as valid, notwithstanding the omission of such statements therein. Where, subsequent to the passing of that Act, it was objected at *Nisi Prius* that a certificate of discharge of mortgage dated and registered in 1869 was invalid, on the ground of the omission to state the residence and occupation of the subscribing witness to the certificate, on the face thereof, though set out in the affidavit, it was held to be clearly no objection, being cured by the enactment just alluded to (2).

BY-LAWS.

73. Every by-law passed since the twenty-ninth day of March, eighteen hundred and seventy-three, or hereafter to be passed by any Municipal Council, under the authority of which any street, road, or highway has been or is opened upon any private property, shall before the same becomes effectual in law, be duly registered in the Registry Office of the County in which the land is situate; and for the purpose of registration a duplicate original of such by-law shall be made out, certified under the hand of the clerk and the seal of the municipality, and shall be registered without any further proof.

2. Every by-law passed before the said day, and every order and resolution of the Quarter or General Sessions passed before the said day, under the authority of which any street, road, or highway has been opened upon any private property, may at the election of any party interested and at the cost and charges of such party or municipality, be also duly registered, upon the production to the Registrar of a duly certified copy of such by-law under the hand of the Clerk of the Municipality and the seal of such Municipality, or by a duly certified copy of such order or resolution of such Quarter or General Sessions, given under the hand and seal of the Clerk of the Peace, as the case may be. 31 V., c. 20, s. 63; 36 V., c. 48, s. 445. See also *Rev. Stat.*, c. 174, s. 507.

Prior to the first day of January, 1850, the power of

Powers of
opening

(1) 29 March, 1873.

(2) *Stoddart v Stoddart*, 39 U. C. R. 203.

roads
vested in
General
Session
prior to 12
Vic., c. 81.

By that
Act trans-
ferred to
County
Councils.

Opened by
Order of
Session.
Since 12
Vic., c. 81,
by by-law.

Reg. of
order or
by-law not
provided
for until
Reg. Act
of 1865.

Conflict-
ing pow-
ers of
Municipal
Act of
1873.

Classes of
individu-

ers and duties connected with the opening up, lay-
ing out, and closing highways were vested in Jus-
tices of the Peace in Sessions assembled, by virtue
of the Act 53 George III, cap. 1, repealing the Acts
33 George III, cap. 4, and 38 George III, cap. 7.

But by Stat. 12 Vic., cap. 81, sec. 190, these powers
and duties were declared to be vested in the Muni-
cipal Council for each County or Union of Coun-
ties. They have since been conferred upon Town-

ship Councils. Roads opened up, therefore, under
authority granted prior to the first of January,
1850, rest upon resolution or order of the Sessions,
while those opened under authority granted sub-
sequent to that date are authorized by by-law.

The registration of by-laws or orders of Sessions
was not provided for until by the Registry Act of
1865 (1), subsequently incorporated in the Act 29-
30 Vic., cap. 81. Similar provision was contained
in the Registry Act of 1868 (2) and the "Act re-
specting Municipal Institutions" passed in 1873 (3).

Notwithstanding that by the terms of the Regis-
try Acts of 1865 and 1868 it was declared impera-
tive to register by-laws relating to the opening up
of roads upon private property, passed subsequent
to the first of January, 1866, before the same
would be effectual, the Municipal Act of 1873 ren-
dered it optional to do so in the case of by-laws
passed after that date, but before the date of that
Act (4); and then it was only necessary to produce
a certified copy, instead of a duplicate original, as
provided for in the Registry Acts of 1865 and 1868.
This inconsistency has since disappeared.

The section as now consolidated provides for the

- (1) Sec. 61.
- (2) Sec. 63.
- (3) 36 Vic., cap. 48, sec. 45.
- (4) March 29, 1873.

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registration of the three classes of official instruments, under which roads have been, or may hereafter be, opened up on any private property, but does not refer to any other description of road, nor does it include by-laws passed for any other purpose. The instruments dealt with by this section are divided into

(1) Orders and resolutions passed at Quarter or General Sessions prior to January 1st, 1850.

(2) Municipal by-laws passed subsequent to January 1st, 1850, but prior to March 29th, 1873.

(3) The Municipal by-laws passed on and since the last mentioned date or hereafter to be passed.

Orders and resolutions of Quarter and General Sessions are registered through the production of a certified copy thereof under the hand of the Clerk of the Peace. As no mention is made of the seal of that office, it is apprehended that it is not essential to attach the seal to the certified copy. By-laws passed prior to the 29th March, 1873, are registered upon production of a duly certified copy under the hand of the Clerk of the municipality and seal of the said municipality; while those subsequent to that day are required to be registered through a duplicate original, certified to be such duplicate original under the hand of the Clerk, and the seal of the municipality. In either case no additional proof is required.

It will be noticed that by-laws affecting the opening up of roads upon private property which have been, or may be, passed since the 29th March, 1873, will not become effective or operative in law until duly registered in accordance with the provisions of this section, and therefore any acts or

things done thereunder prior to such registration are absolutely void and of no effect.

In an action for trespass *quare clausum fregit*, &c., the defendants, among other defences, pleaded having entered plaintiff's property under the authority of a by-law passed in 1857, opening up a highway through the land in question, which at that time was the property of plaintiff's predecessor. To this plea the plaintiff replied that the title to the lands was a registered title, and that subsequent to the passing of the by-law the Statute 36 Vic., cap. 48, was passed; and further averred that the highway was not properly opened under, and in pursuance of, the by-law prior to the time the plaintiff purchased the land or since; and that the by-law was never acted upon or treated as valid. The plaintiff also in his replication averred that he set up title in himself as purchaser for value without notice of the by-law, and that the latter was not registered against the land. It was held, that the plaintiff purchased with full notice of the road having been laid out, and that the by-law, having been passed prior to the Municipal Act of 1873 coming into effect, did not require registry in order to render it valid, as it was optional to register it at the election of any party interested (1).

As the section is not retrospective it follows, that it is optional to register by-laws for opening roads through private property passed prior to the 29th March, 1873, but that it is essential to the validity of by-laws passed subsequent to that date, that they be registered in the manner required by this section.

Municipal corporations are bound by the Registry Act in like manner as individuals.

(1) *Beveridge v. Creelman et al.*, 42 U. C. R., 29.

Land mortgaged by the owner was taken by a township council for a road, and the compensation having been ascertained by award, the corporation paid the amount to a creditor of the mortgagor, by whom it had been attached; held, that the mortgagee had the prior right; that his mortgage being registered, the corporation had notice of it, and that he was entitled to recover the amount from the corporation with costs (1).

In addition to the class of by-laws referred to in this section, by-laws passed for the purpose of altering the name of any street, square, road, lane or other public communication must, if the same are to have any force, validity or effect, be registered in the proper Registry Office (2), although no particular mode of proof for the registration of such by-laws is laid down by the Municipal Institutions Act. It is submitted, however, that inasmuch as the registration of by-laws opening up roads on private property, passed since the 29th March, 1873, is required to be made through duplicate originals certified by the Clerk, and accompanied by the seal of the municipality, instead of through certified copies as formerly, registration through duplicate originals of all other by-laws requiring registration must have been contemplated by the Legislature when enacting 40 Vic., cap. 7; and that, therefore, registration of a by-law of the class here referred to, must be made through a duplicate original duly certified by the Clerk, and under the municipal seal.

(1) *Dunlop v. The Township of York* 16 Gr., 216.

(2) Rev. Stat. (Ont.), cap. 174, sec. 466, s. 46.

CHAPTER. X.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

- §74. Unregistered instruments after grant, &c., to be void against subsequent purchasers, &c.
 §75. Wills not registered within certain time to be void, &c.
 §76. Registry of deeds on sales for taxes. Other sales under process of Court.
 §77. Sales for taxes before 4th March, 1868.
 §78. Registry to be notice.
 §79. Retrospective operation of Section 78.
 §80. Actual notices. Priority of registration.
 §81. Equitable liens, &c. Tacking.

Unregis-
tered in-
struments
after grant
from the
Crown to
be void
against
subse-
quent re-
gistered
purchaser.
&c.

Import-
ance of
this and
following
sections.

Policy of
Registry
Laws.

74. After any grant from the Crown of lands in Ontario, and letters patent issued therefor, every instrument affecting the lands or any part thereof comprised in such grant shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless such instrument is registered, in the manner herein directed, before the registering of the instrument under which such subsequent purchaser or mortgagee claims. 31 V., c. 20, s. 64; 36 V., c. 17, s. 7.

The sections treated of in this chapter contain by far the most important clauses of this Act, inasmuch as they embrace the general policy and effect of registration, and the consequences arising from neglect to register.

The policy of the Registry Law may be deduced from the preamble to the Registry Act of 1795, and from many decisions in our Courts bearing upon the question. The preamble to the statute alluded to (1) recites that whereas the lands at that time held in this Province would shortly thereafter be confirmed by grant from the Crown, it seemed desirable to establish a Register in each County and Riding in the Province, in order that if after such lands should be confirmed by patent, transfers, alienations and devises thereof should

(1) See Appendix D.

be made, memorials of such transfers, alienations and devises should be made, and registered for the "better securing and more perfect knowledge of the same."

One of the chief objects designed by the Registry Act is to give notice to all persons desiring to ascertain whether there has been any prior conveyance or encumbrance of the real estate described in any particular instrument. When an instrument has been duly registered it operates as notice, and is as effectual as if each subsequent purchaser and encumbrancer had direct personal knowledge of its existence.

The changes and alterations effected from time to time in the application of the Registry laws being noticed in the introductory chapter of this work, it will be sufficient to refer the reader thereto, and to proceed with the more immediate consideration of the section under remark, and the various clauses contained therein.

It will be noticed that the section speaks of the registration of an instrument affecting lands *after* the issue of the Crown grant therefor.

As a general rule the provisions of registration in the County Registry Office do not apply to the case of instruments executed prior to the grant from the Crown. An exception to the rule however occurs in the case of an instrument creating a mortgage, incumbrance, or lien upon the land (1).

This exception exists under the provisions of the Rev. Stat. (Ont.), cap. 25, sec. 26 (2), which enacts that any mortgage, incumbrance or lien executed prior to the issue of letters patent by the original nominee of the Crown or his assignee, by

(1) *Holland v. Moore*, 12 Gr., 296.

(2) Taken from Con. Stat. U. C., cap. 80, sec. 24.

which the mortgage, &c., might have been validly granted, had the same been executed subsequent to issue of patent, can be registered in the Registry Office for the County in which the lands lie.

How in-
struments
other than
mortgage,
&c. should
be filed.

Bond by
locatee.

Will of
nominee
or assign-
ee

Registra-
tion before
patent, is
notice.

Notice of
unregist-
tered as-
signment
of Crown
Lands.

Instruments not creating a mortgage, incumbrance or lien, and executed prior to issue of patent, should be filed in the office of the Commissioner of Crown Lands in order to obtain priority (1.)

A bond to convey, executed by the locatee of Crown Lands, was held not to come within the term "mortgage, encumbrance or lien," and therefore was not capable of registration in the County Registry Office (2).

Although there is no decision upon the point, it is conceived that a will, executed by a nominee of the Crown, or his assignee, may be registered in the County Registry Office before patent issued. Although not strictly an "incumbrance or lien," yet a devise of lands is a charge affecting such lands, and the Courts will doubtless give effect thereto.

Registration, however, of instruments affecting non-patented lands is notice to a subsequent purchaser, whether the patent has issued under or without a decision of the Heir and Devisee Commission (3).

Although an assignment of unpatented lands should be filed with the Commissioner of Crown Lands as above stated, express notice of the assignment, although the same may not be registered or filed, has the same effect as like notice of an unregistered instrument after patent has. The assignee for value from the nominee of the

(1) See Rev. Stat. (Ont.), cap. 23, sec. 17.

(2) *Holland v. Moore, supra.* See *Casey v. Jordan*, 5 Gr., 467.

(3) *Vance v. Cummings*, 13 Gr., 25.

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Crown died without registering his assignment from the nominee in the books of the Crown Lands Department, and the assignor subsequently there-to executed a second assignment to another person for a trifling sum. The latter having had express notice of the first assignment, applied for and obtained the patent; it was held that he took subject to the rights of the heirs of the first assignee (1).

Prior to the Statute 13 and 14 Vic., cap. 63, registration was optional, and it was not necessary to register an instrument in order to obtain priority unless the title were a "registered title" at the time of the execution of such instrument, the Registry Acts of 1795 and 1846 not applying where no deed had been previously registered (2).

A "registered title" was a title whereon some previous registration had been effected (3).

It was held, under the Registry Act of 1795, that in order to postpone a prior deed to a subsequent conveyance, upon the ground of the non-registry of the former, evidence had to be adduced at the trial, that the title was a registered one at the date of the execution thereof (4).

Where the conveyance from the heir-at-law was executed in 1833, the title not being at that time a registered one, it was held, that the registration of the will of the ancestor was not a condition pre-

(1) *Goff v. Lister*, 13 Gr., 406; 14 Gr., 451. See *Rykert v. Miller*, 14 Gr., 25.

(2) *Doe d. Pell v. Mitchener*, Dra. 471; *Doe d. Hennessey v. Myers*, 2 O. S., 424; *Doe d. Adkins v. Atkinson*, 4 O. S., 140; *Scott, et al., v. McLeod*, 14 U. C. R., 574; *Doe d. Shibley v. Waldron*, 2 U. C. P., 189; *Campbell v. Fox*, 26 U. C. R., 631. See S. C. 17 U. C. P., 542. See *Dumble v. Johnson, et al.*, 17 U. C. P., 9.

(3) *Doe d. Hennessey v. Myers supra*.

(4) *Neeson v. Eastwood, et al.*, 4 U. C. R., 271. See *Blakely v. Garrett*, 16 U. C. R., 261. *Ryan v. Devereaux*, 26 U. C. R., 100.

cedent to enable the devisee to recover possession from the grantee of the heir-at-law (1). An objection made to the validity of a will, on the ground of its non-registration within the time prescribed by the twelfth section of the Registry Act of 1846 (2) or previous to the conveyance from the heir-at-law, was not allowed to prevail, it appearing that the title was not a registered one when the will was made (3).

A testator, by his will made in 1831, created a charge upon his lands; the patent afterwards issued to his devisees in 1852, who sold and conveyed the property absolutely. The conveyance being registered before the will, it was held that the lands were subject to the charge in the hands of the purchasers from the devisees, notwithstanding the non-registration of the will; the Statute 13 and 14 Vic., cap. 63, not being retrospective in such a case (4).

A mortgagee, whose mortgage was made prior to registration being made necessary to insure priority, filed a bill to foreclose same. The mortgage had not been registered. It was held, that subsequent mortgagees could not set up the defence of purchasers for valuable consideration without notice, and were liable to redeem him (5).

Former doctrine of registered title may yet affect titles.

It is necessary to bear in mind that questions may yet arise in actions of ejectment, and proceedings affecting titles to lands, where the provisions of the Registry Acts of 1795 and 1846 as to registered titles may have an important bearing. The effect of the registration or non-registration of in-

(1) *Scott, et al., v. McLeod*, 14 U. C. R., 574.

(2) Similar to sec. 75 *post*.

(3) *Doe d. Ellis, v. McGill*, 8 U. C. R., 224.

(4) *Campbell v. Campbell*, 6 Gr., 600.

(5) *Vansickler v. Pettit*, 5 C., L. J. 41.

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struments, through which title has to be derived, is controlled by the different Registry Acts that were respectively in force at the time of the execution of such instruments.

The late case of *Jones v. Cowden, et al.* (1) may be appropriately referred to in illustration of this point. In that case the plaintiff brought ejectment, claiming title under a sale for taxes made in 1839. The Sheriff's deed therefor was executed July 10th, 1840, but was not registered until July 18th, 1861. The defendant claimed under a deed from the heir-at-law of the patentee, dated May 18th, 1855, and registered July 5th, 1855, being the first deed registered upon the land. It was held, *Wilson J. dissentiente*, that the title being an unregistered one when the Sheriff's deed was given, that deed did not then require registration to preserve its priority; and that having been registered before the passing of the Registry Act of 1865, repeated in the Registry Act of 1868, it was not necessary to re-register under those or any subsequent Registry Acts. The plaintiff's title was therefore held to prevail.

It being a well-recognized rule that every deed or other instrument, under which one claims title, should be registered, it follows that an instrument can only be properly registered by its actual production and entry.

Where an agreement in relation to the valuation of certain lands was not registered, but an instrument containing a recital of the agreement was registered, it was held that the agreement itself not being registered, the recitals in the registered instrument could not affect the plaintiff's title (2).

(1) 34 U. C. R., 346.

(2) *Butledge v. McLean*, 12 U. C. R., 265.

*Jones v.
Cowden.*

*Instru-
ment itself
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*Recitals
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Assign-
ment of
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lease.

The registration of an assignment of an unregistered lease reciting such lease, has been decided not to amount to a proper registration of the latter (1). It has been decided under the Registry Laws of Quebec that a reference in a registered deed to a prior unregistered deed is not equivalent to a registration of such prior deed, so as to defeat a subsequent registered mortgage (2).

When re-
citals may
amount to
notice.

But such recitals may amount to notice of the unregistered instrument, sufficient to enable it to retain priority over a subsequently executed instrument. H. K. by an unregistered deed granted a rent charge to his daughter; upon the following day a marriage settlement reciting the rent charge was executed, by which settlement the rent charge was conveyed to trustees; H. K. was an assenting party to the settlement which was duly registered. H. K. afterwards mortgaging the land out of which the rent charge issued which mortgage was also registered, it was held that the rent charge, though granted by an unregistered deed, had priority over the mortgage, by reason of the registration of the marriage settlement (3).

The intention of the Act is to provide for the registration of all instruments affecting the title to land, subject to the exception contained in the thirty-seventh section *ante* (4). Apart from those instruments which are required to be registered by the particular statutes referred to in Appendix B., there are others, the registration of which has been deemed essential under decisions of that effect.

(1) *Honeycomb v. Waldron*, 2 St. 1064; followed in *Reid v. Whitehead*, 2 E. & A., 580. *Williams v. Sorrell*, 4 Ves., 389.

(2) *Delesdernier v. Kingsley*, 3 U. C. R., 84.

(3) *Hunter v. Kennedy*, 1 Ch. Rep., 148; *aff'd. on appeal*, ib. 225. See *McAlpine v. Swift*, 1 Ball. & B., 285.

(4) See p. 16 *ante*; see *McMaster v. Phipps*, 5 Gr., 253.

As the "Act and Warrant," under the Imperial ^{Act and} Statute 19-20 Vic., cap. 79 is capable of registra- ^{Warrant.} tion in the colonies, its non-registration in this Province can be set up as a defence by a purchaser for value without notice (1).

A release of a covenant which runs with the ^{Release of} land, and is contained in a registered deed, should ^{covenant.} be registered as against subsequent vendees (2).

Although a purchaser may not be affected by equities existing between the covenantor and covenantee, of which he has no notice, it would appear that a release of the covenants, executed by the covenantee in favour of the covenantor, during the covenantee's ownership of the land will, at common law, operate as a bar to an action upon such covenants, brought by a subsequent purchaser from the covenantee (3). There are, however, peculiar reasons for holding such a release to be so intimately connected with the conveyance of real estate as to become a proper subject for registration (4). Where the release would materially affect the title to land it is, unless registered clearly imperative against a subsequent purchaser for value, without notice. Under the Registry Act of the State of Maine it was held that a release of a covenant for title did not come within the provisions of that Act, upon the ground that "purchasers are not entitled to regard the registry as affording information respecting the right of action on covenants contained in the deeds recorded," but this decision has been questioned (5).

A further charge in favour of the first or a prior ^{Further} charge.

- (1) Robson v. Carpenter, 11 Gr., 293.
- (2) Field v. Snell, 4 Cush, 50.
- (3) See Middlemore v. Goodall, Cro. Car., 503.
- (4) Field v. Snell *supra*.
- (5) Littlefield vs. Gitchell, 32 Maine, 392.

mortgagee requires registration, notice of a prior mortgage not imposing upon a subsequent purchaser or incumbrancer the duty of making enquiries of the first or prior mortgagee, and so affecting him with notice of such further charge (1).

Deeds
creating
powers.

The registration of a deed creating a power does not dispense with the necessity of registering an appointment made in exercise of such power (2).

Estates created by the execution of a power take effect as if created by the original deed, and, in general, a deed executing a power cannot be considered as a new alienation or independent conveyance. There are some cases, however, when the execution of a power is looked upon as a substantive independent instrument. When a deed executed in pursuance of a power affects land, it must be registered, as it is within the mischief intended to be guarded against by the statute. A purchaser could not otherwise ascertain whether the power had been executed, or if executed, whether in a proper manner (3).

Foreign
deed of
insol-
vency.

An assignment in insolvency executed in England was held to require registration in Ireland, in order to affect estates in the latter country (4). It would, of course, require to be registered in this Province in order to affect lands therein.

But a foreign adjudication in bankruptcy does not affect land in this Province (5); and it has been recently determined that an assignment in bankruptcy, executed under the provisions of an Act of the Congress of the United States, will not

- (1) *Credland v. Potter*, 18 Eq., 550.
- (2) *Sraffon v. Quincey*, 2 Ven., 5. 411. See Att'y General v. *Pickard*, 3 M. & W., 575.
- (3) 2 Sug. Powers 20.
- (4) *Battersby v. Rochfort*, 2 J. & L., 411.
- (5) *Simpson v. Fogo*, 1 H. & M., 216.

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transfer, or otherwise affect real estate belonging to the bankrupt statute in Canada (1).

In an action by a vendee against his vendor, upon an alleged breach of agreement to deduce a good title, the defendant contended that he had made a good title; but, inasmuch as one of the deeds in the chain of title had not been registered, it was held that the title, being a registered one, had not been deduced, and a rule for a new trial was discharged (2).

This case was followed and approved of in *Brady v. Walls* (3), *Mowat, V. C.*, remarking that "it is certainly in the spirit of the legislation of this country in regard to the Registry Laws." It was accordingly held in this last case, that a purchaser is, in this country, entitled to require registration by his vendor of all the instruments through which the title is derived.

The Act avoids an unregistered instrument against "subsequent purchasers or mortgagees for valuable consideration."

In order to ascertain who come within the term "purchasers and mortgagees for valuable consideration," it will be necessary to consider:—

- (1) The meaning of the word purchaser.
- (2) Who are purchasers.
- (3) Who are not purchasers.
- (4) What is deemed a valuable consideration.
- (5) Upon what consideration the registered instrument must be founded.
- (6) Who are entitled to take advantage of purchase for value.
- (7) Evidence of purchase for value.

(1) *Macdonald v. Georgian Bay Lumber Co.*, 2 Sup. Ct. R., 364.
(2) *Kitchen v. Murray*, 16 U. C. P., 69.
(3) 17 Gr., 699.

I. Meaning of the word purchaser :—

Pur-
chaser.

"A purchaser for value is one who, at the time of his purchase, advances a new consideration, surrenders some security, or does some other act, which, if his purchase were set aside, would leave him in a worse situation than his original position" (1).

II. Who are purchasers :—

Mort-
gagee.

"A mortgagee of real estate is a 'purchaser' within this Act. 'When I speak of a purchaser for valuable consideration,' says Lord Hardwicke, 'I include a mortgagee, for he is a purchaser *pro tanto*' (2). The assignee of a mortgage is a purchaser (3). Since the Act 39 Vic., c. 7, the assignee in good faith of a mortgage can set up defence of purchase for value without notice (4).

Assignee
of mort-
gagee.Trustees
for credi-
tors.

It was at one time thought that trustees for the benefit of creditors were not purchasers within the Act (5); but it has since been held that a mortgage, executed in favor of trustees for creditors, to secure their debts, was founded upon a sufficiently valuable consideration to preserve the priority gained by the registration thereof, over a conveyance executed prior to the mortgage, but subsequently registered (6).

Assignee
in insol-
vency.

Although an assignee in insolvency is not a purchaser within the meaning of this section, yet a purchaser from the assignee, without notice of a prior unregistered conveyance executed or incum-

(1) Bigelow on Estoppel.

(2) Willoughby v. Willoughby, 1 T. R., 763.

(3) Totten v. Douglas, 15 Gr., 126, overruling McPherson v. Dougan, 9 Gr., 258.

(4) Rev. Stat. (Ont.), c. 95, ss. 8 & 9. See Pressy v. Trotter, 26 Gr., 154-295.

(5) Neeson v. Eastwood *et al.*, 4 U. C. R., 271.

(6) Fraser v. Sutherland, 2 Gr., 442. Burnham v. Daley, 11 U. C. R., 211.

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brance created by the insolvent prior to insolvency, is a purchaser for valuable consideration (1).

The provisions of the Act apply equally to Sheriff's deeds executed in favor of purchasers at Sheriff's sale as to any other description of conveyances (2).

A purchaser at Sheriff's sale is a purchaser for valuable consideration (3).

It was held, following the case of Doe d. Brennan v. O'Neil, *supra*, that a purchaser for value, with a registered title, under a Sheriff's sale of A's interest in land, was entitled under the Registry Laws to prevail against a non-registered conveyance made by A. prior to the sale by the Sheriff (4).

It is a clear and well-settled rule in equity that a purchaser for value (without notice) will never be deprived of any advantage he possesses arising from either a legal or equitable title, or even from mere possession; although, as between or amongst mere equitable claimants it will enforce the right of the prior, against the subsequent claimant in point of time, in compliance with the maxim, "*Qui prior est tempore, potior est jure*" (5). A plea of purchase for value without notice cannot be set up against the Crown (6).

A person entitled to a lien upon land under "The Mechanics' Lien Act," and filing a statement of claim, verified by affidavit in the manner prescribed by that Act, is a purchaser *pro tanto* within the meaning of the Registry Act, but his

(1) Hodgen v. Guttery, 58 Ill., 431.

(2) Doe d. Brennan v. O'Neil, 4 U. C. R., 8.

(3) Waters v. Shade, 2 Gr., 457, per Spragge, V.C.

(4) Bruyere v. Knox, 8 U. C. P., 520.

(5) Mitchell v. Gorrie, 6 Gr., 625. See Miller v. Wilcox, 16 U. C. P., 529; S. C., 17 U. C. P., 368.

(6) Att'y General v. McNulty, 11 Gr., 281.

lien will terminate at the lapse of ninety days from completing the work, delivery of materials or expiration of period of credit, unless he institute proceedings to recover the value thereof, and register a certificate of such proceedings having been commenced. The lien can be vacated upon satisfaction or proper security being furnished (1).

III. Who are not purchasers :—

Consideration must be valuable.

A., holding land under a registered title, sold to B., whose deed was not registered; B. sold to C., and afterwards re-sold the land to D., who registered his deed, the deed from B. to C. not being registered. C., having obtained a deed of release from A's heir-at-law for a nominal consideration, registered it. It was held that C. could not thereby obtain priority over D., the former not being considered, as to the release, a subsequent purchaser for value (2).

Judgment creditor.

A judgment creditor is not a purchaser within the Act (3) nor under the Statute 27 Eliz., cap. 4, so as to avoid voluntary conveyances (4). "One cannot call a judgment creditor a purchaser, nor has such creditor any right to the land, he has neither *jus in re* nor *jus ad rem*" (5).

Execution creditor.

An execution creditor is not a purchaser within the Registry Act.

Assignee in insolvency.

An assignee in insolvency is not a purchaser so as to obtain any priority by prior registration of the assignment deed over an unregistered deed, founded upon valuable consideration and executed

(1) See Rev. Stat. (Ont.), cap. 120, amended by 41 Vic., cap. 17.

(2) Doe d. Major v. Reynolds, 2 U. C. R., 311; see Doe d. Russell v. Hodgkiss, 5 U. C. R., 348. Baby *qui tam* v. Watson, 13 U. C. R., 531.

(3) Finch v. Winchelsea, 1 P. Wms., 277.

(4) Beavan v. Lord Oxford, 2 Jur. N. S., 121; Gillespie v. Van Egmond, 6 Gr., 533.

(5) Bruce v. Duchess of Marlborough, 2 Plow., 491.

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by the insolvent prior to his insolvency in favor of a person ignorant of his position (1). The assignment does not pass the title in insolvent's real estate to assignee, unless it be executed and registered according to the Insolvent Act (2).

The assignee of a bankrupt has no greater rights in respect to unregistered deeds made by the latter than he himself would possess. Such assignee, therefore, takes the bankrupt estate subject to any incumbrances he has made, notwithstanding their non-registration (3).

It has been held that, although as a general principle an assignee of a mortgage is entitled to be classed as a purchaser, yet that he is but an assignee of a *chose in action* (4). If he acquires title by purchase from a trustee he takes subject to all the equities existing between the trustee and those for whom he holds beneficially, and the assignee is, under such circumstances, disentitled to set up the defence of a purchaser for value without notice (5). The registered owner of land having mortgaged it, afterwards conveyed the property absolutely to a purchaser for value, who, before the first mortgage was registered, caused his deed to be registered, and executed a mortgage to the vendor, for a portion of the purchase money. Subsequently, the vendor assigned this mortgage from the purchaser to another person for value, without notice of the prior mortgage. It was held, that the vendee's mortgage, in the

Has no greater rights under this Act than the insolvent.

Assignee of mortgage.

(1) *Hodgen v. Guttery*, 58 Ill., 43. See *Collver v. Shaw*, 19 Gr., 599.

(2) *Parlee v. Agricultural Ins. Co.*, 3 Pug. 476. See *Daws v. Anderson*, 6 Bank. Reg. (N.Y.), 145.

(3) *Jones v. Gibbon*, 9 Ves., 407.

(4) *Fisher on Mtges.*, 696; *Cockell v. Taylor*, 15 Beav., 103.

(5) *Moore v. Jervis*, 2 Col., 60; *Ryckman v. Canada Life Ass. Co.*, 17 Gr. 550, but see *Rev. Stat. (Ont.) c. 95, s. 8.*

hands of the assignee thereof, was subject to the lien or charge of the vendor's mortgagee (1). In this case, had the purchaser executed the mortgage for the balance of purchase money in favour of a person other than the vendor, and such mortgage had been registered by the mortgagee, the latter could have retained priority over the first mortgage, and his assignees would have been entitled to the benefit of his position: But, as in the case cited, the mortgage from the purchaser to his vendor, (the latter being affected with the trust in favour of the prior mortgagee), could not have retained priority as against such first mortgage; nor by transferring the mortgage could he place his assignee in any better position than himself.

Mortgage
founded
on a past
considera-
tion.

In the United States a distinction has been drawn between the case of a mortgage founded upon a consideration arising at the time of its execution, and that of a mortgage founded upon a past or antecedent consideration, such as if made to secure a prior debt; the mortgagee under a mortgage arising within the latter class not being regarded, in their Courts, as a purchaser for valuable consideration, to entitle him to protection against prior equities, of which he may have had no notice when the mortgage to him was executed (2).

Purchaser
must have
the legal
estate.

A person who has not the legal estate cannot be esteemed a purchaser within this Act. In such a case it becomes a mere question between equities (3). It has been held that a party claiming

(1) *Smart v. McEwan*, 18 Gr., 623, following *Ryckman v. Can. Life Ass. Co.* *supra*.

(2) *Jones on Mtges.*

(3) *Wigle v. Setterington*, 19 Gr., 518; see *Phillips v. Phillips*, 8 Jur. N. S., 145.

under a quit claim deed is not, in general, protected as a purchaser for value without notice (1).

The purchase must have been made in good faith, otherwise the person so purchasing is not a "purchaser" within this section. "Except in the case of an *honest, bona fide purchaser*, the defence of a purchase for value is not valid, either under the Registry Laws or otherwise; and the further question of notice of the particular claimant's title does not arise" (2).

The Registry Act protects honest purchasers, but repudiates those whose purchases are speculative (3). Only an instrument above exception and untainted with fraud will retain priority by registration (4). It is essential, in order to entitle a purchaser to retain priority, that he should have given value in good faith (5).

IV. What is deemed a valuable consideration :—

The statute operates only in favour of purchasers who have given valuable consideration. Consideration may be either good or valuable. Good consideration has been defined to be "such as that of blood, or of natural love and affection—being founded on motives of generosity, prudence and natural duty" (6). A valuable consideration consists of money, marriage, work performed, services rendered, forbearance of legal and equitable rights or any other thing that bears a known or relative value.

The adequacy of consideration is immaterial, and will not be enquired into either at law or in

(1) Goff v. Lister, 14 Gr., 451.

(2) McLennan v. McDonald, 18 Gr., p. 510, per Mowat, V. C.

(3) Rice v. O'Connor, 12 Ir. Chy., 424.

(4) Underwood v. Lord Courtown, 3 Sch. & Lef., 41.

(5) W. & T. L. C., 37.

(6) 2. Blackstone Com., 297.

equity, but inadequacy of consideration may be a badge of fraud.

Valuable
considera-
tion neces-
sary to re-
tain pri-
ority of
registra-
tion.

It need hardly be observed that the consideration must be lawful. Consideration, illegal either at common law or by statute, practically amounts to absence of consideration (1).

V. Upon what consideration the registered instrument must be founded :—

It is essential that there should be a valuable consideration to support a prior registered deed as against a subsequent purchaser for value. As against a subsequent purchaser for value a voluntary conveyance is void, and this objection may be taken advantage of in any proceedings that may be adopted by, or had against, such purchaser (2). A conveyance by the heir at law for a nominal consideration, although registered prior to the will of his ancestor, does not operate to cut out the will, a valuable consideration being required to have that effect (3).

In 1855 a father executed an agreement, under seal, covenanting to convey to his son James, one-half of the east half of a certain lot; it being agreed that James should till the farm as usual, and account to his father for a certain portion of the produce. In 1863 the father conveyed the whole lot to two other sons, for an expressed consideration of five hundred pounds. This deed was registered before the agreement; the vendee of the two sons brought ejectment against the widow and the devisee of James. The jury having found that the deed of 1863 was voluntary, and the plaintiff not having shewn that he had paid any

(1) See *Watts v. Mitchell*, 26 Gr., 570 and cases cited therein.

(2) See *Heap v. Crawford*, 10 Gr., 442.

(3) *Wilkinson v. Corklin*, 10 U. C. P., 211.

valuable consideration for the conveyance to himself, it was held, that the prior registry of the deed of 1863 could have no effect upon the agreement of 1855, the Registry Laws requiring consideration to support priority of registration (1).

Where a mortgage, being voluntary, was void under the Act 27 Eliz., cap. 4, as against a subsequent conveyance founded upon valuable consideration, it was held that the registration of such mortgage prior to such conveyance could not alter or affect the character of such mortgage or render it valid (2). In this case the mortgagee had assigned the mortgage to one S., who neglected to register the assignment until after the execution and registry of the conveyance; the assignment was deemed void under the Registry Act as against the conveyance.

Voluntary
instru-
ments
void as
against
subse-
quent con-
veyance
on good
considera-
tion.

Where a conveyance of the wife's land was made to the husband after marriage, in pursuance of a *parol* contract alleged to have been entered into prior to the marriage, it was held, that the husband was not a purchaser for valuable consideration of such land (3).

How far
void.

If the prior registered instrument be voluntary, or founded upon good consideration alone, although good *inter partes* and volunteers under them, it will be void as against a subsequent purchaser for value to the extent necessary to give effect to the subsequent conveyance (4).

A deed voluntary in itself can however become valid through consideration arising subsequent to its execution; such as upon a sale by the grantee

Voluntary
deed may
be made
good by
after

(1) *Leech v. Leech et al.*, 24 U. C. R., 321.

(2) *Miller v. McGill*, 24 U. C. R., 597.

(3) *McCarthy v. Arbuckle*, 29 U. C. P., 529.

(4) *Croker v. Martin*, 1 Bligh. N. R., 573; *Bill v. Cureton*, 2 M. & K., 503; *Doe v. Rusham*, 17 Q. B., 723.

original
considera-
tion.

thereunder to a purchaser for value, or by a marriage settlement being contracted upon the faith of such deed. In other words, voluntary conveyances being only voidable in their creation, may, from the fact of valuable consideration subsequently arising, be converted into deeds founded upon valuable consideration. If A. conveys to B., by voluntary deed, and B. conveys to C. for value without notice, C. will, upon registering his deed, hold priority against a subsequent purchaser for value from A., who registers after the registry of C.'s deed (1). The defect in the conveyance from A. to B., arising from the want of consideration, is remedied in the deed from B. to C. The latter, therefore, in virtue of the consideration moving from him to B. may be held to be constructively in a similar position as if he had primarily given value to A. (2), or as if A.'s deed to B. had been founded upon valuable consideration *ab initio* (3). As between the parties to a voluntary deed, and those claiming under them as volunteers, however, the change resulting from a valuable consideration paid subsequent to the execution thereof, only takes effect from the time such after-consideration arises.

Prior reg-
istration
of volun-
tary deed
enures to
grantee's
assignees
for value.

Although the registration of a voluntary deed, confers no priority upon the grantee and those claiming under him as volunteers (4), his assignee for value is, nevertheless, entitled to any priority arising out of such registration. A., conveyed to B., who neglected to register his deed. A. subse-

(1) *Johnson v. Legard*, Turn. & R., 281; *Prodgers v. Langham*, Sid. 133; conf'd *George v. Milbank*, 9 Ves., 193; *Story*, s. 381.

(2) *Danberry v. Cockburn*, 1 Mer., 626, per Sir Wm. Grant; see *Morewood v. South Yorks. Co.*, 3 H. & M., 748; *Low v. McGill*, 10 L. T. (N. S.), 495.

(3) *In re Flood's Estate*, 13 Ir. Ch. R., 312.

(4) *Ib.*

quently conveyed without consideration to C., who registered and conveyed to D., for valuable consideration; D. also registered. It was held that D., having given valuable consideration to C., the mere fact that C. had not given value to A., would not defeat the priority obtained by D., in registering, as against B.'s unregistered deed (1).

A purchaser for valuable consideration with notice of a prior voluntary settlement will not be postponed or otherwise affected by such notice (2).

Where a conveyance expressed to be for valuable consideration is in reality voluntary, it forms a cloud upon the title, and the Court will decree its removal (3).

But where the instrument is void upon the face of it, and therefore cannot be said to be a cloud upon the title, the Court will not interfere (4); as this objection will avail a purchaser for value in any proceedings adopted either by or against him, such a deed being void as against him (5). If it be clearly shown, however, that the voluntary deed was prepared, executed and registered, for the express purpose of a fraud upon the plaintiff, its removal will be decreed (6).

The consideration must not be tainted with fraud. A conveyance is fraudulent and void *toto* as against a subsequent purchaser for value, if the consideration for which such conveyance is executed is founded partly upon a just debt, and partly upon a sum not due but fraudulently inserted. A person in embarrassed circumstances

(1) Doe d. Matlock v. Disher, 4 U. C. R., 14.

(2) Buckle v. Mitchell, 18 Ves., 106.

(3) Ross v. Harvey, 3 Gr., 619. See McDonald v. Georgian Bay Lumber Co., 24 Gr., 356. Lovelace v. Harrington, 27 Gr., 178.

(4) Hurd v. Billinton, 6 Gr., 145.

(5) Buchanan v. Campbell, 14 Gr., 163.

(6) Ib. Ross v. Harvey, *supra*. See Oxley v. Lee, 1 L. R. Eq., 164.

made a deed of land to his son in alleged pursuance of a prior agreement, but he remained in possession of the property, retaining the deed in his own hands and unregistered, for fifteen months. There being, in addition, other circumstances against the good faith of the transaction, it was held, that the deed was void as against subsequent creditors, the prior creditors having been paid (1).

Rights attaching to a purchaser for value enures to his transferees.

VI. Who are entitled to take advantage of purchase for value :—

As a general rule, a person claiming title under another is entitled to be placed in the latter's position, and to enjoy the benefits attaching thereto.

The Registry Acts do not affect the great fundamental principles of equity, and a purchaser claiming under a registered deed, is left open to any equity which a prior purchaser or incumbrancer may have (2). As where a purchaser for value, without notice of an unregistered incumbrance or equity, subsequently sells the land, but prior to such sale both he and his vendee acquire notice of such incumbrance or equity, the vendee will take and hold the title free from such incumbrance or equity ; as the sale will relate back to registration of the deed under which the vendor claims, and the vendee is entitled to be placed in the vendor's position at the date of such registration. To hold the contrary would have the effect of destroying the objects aimed at, and benefits conferred by, registration. The rule in equity is never to permit a legal right to be disturbed by

(1) *Stevenson v. Franklin*, 16 Gr., 139.

(2) *Chandos v. Brownlow*, 2 Ridg., P. C., 428.

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referre

any equity subsequently disclosed. Where a person becomes the assignee of a mortgage for value, without notice, and subsequently assigns his assignee, though taking with notice, is entitled to the benefit of the first assignee's position in that respect (1).

The prior registration of a mortgage containing a power of sale enables the mortgagee, in the proper exercise of such power, to sell the land free from the claim of a purchaser from the mortgagor, prior in point of time to the execution of the mortgage, but who neglected to register his conveyance before the mortgage was recorded (2).

VII. The evidence of purchase for value:—

A deed *per se* imports consideration (3), but not necessarily so in equity (4).

The amount of consideration expressed in a deed is not invariably the true criterion of its adequacy, but the smallness of it may be important corroborative evidence upon a question of fraudulent interest (5).

It is competent to shew the existence of other consideration than that expressed in the deed, in order to negative fraud, provided that the evidence of the unexpressed further consideration is not inconsistent with the deed (6).

The production of the subsequent conveyance reciting that a valuable consideration had been

(1) Per Mowat, V.C., *Totten v. Douglass*, 15 Gr., at p. 131.

(2) *Daniels v. Davidson*, 9 Gr., 173.

(3) Plow., 309.

(4) *Kikeworth v. Manning*, 15 D. M. & G., 188 per Sir J. L. K. Bruce.

(5) See *Goff v. Lister*, 14 Gr., 460; *Patulo v. Boyington*, 4 U. C. P., 137; *Shank v. Coulthard*, 19 Gr., 324.

(6) *Bank of Toronto v. Eccles*, 10 U. C. P., 282, and the cases referred to therein.

given, is not evidence of such consideration, as against a stranger to such conveyance (1).

Onus of proof lies on party seeking priority.

A party who claims, under a subsequent conveyance, and seeks to displace a prior one by reason of the earlier registration of the conveyance under which he claims, ~~must~~ before he can recover in ejectment, adduce ~~some~~ proof that he stands in the position of a purchaser or mortgagee for valuable consideration (2); the *onus probandi* in this respect being upon the party claiming priority.

A. conveyed to B.'s son, then a minor, by deed not registered, and subsequently A.'s heir-at-law conveyed to B., who registered. It was held that B. could not displace his son's title by the mere fact that he had registered before the latter, as no evidence of B.'s having given any valuable consideration had been furnished (3). It is not sufficient that the purchaser should have given valuable consideration to entitle him to the protection of this Act. He must be a purchaser for valuable consideration, "without actual notice."

Purchaser must have acquired "without actual notice."

General principle on which doctrine of notice rests.

The general principle upon which notice of an unregistered instrument is held to affect the party having such notice to the same extent as if the instrument had in fact been duly registered, rests upon the ground that registration is merely a substitute for the notoriety formerly attaching to ceremony of livery of seisin. If the notoriety intended to accompany either of these Acts is accomplished *aliunde*, the purposes of registration, so far as notice is concerned, are attained, and registration becomes unnecessary. Knowledge, or notice,

(1) *Doe d. Cronk et al. v. Smith*, 7 U. C. R., 376.

(2) *Ib.* See *McKenney v. Armit*, 8 U. C. P., 46.

(3) *Doe d. Prince v. Girty*, 4 U. C. R., 41.

which is equivalent to knowledge, may therefore usurp the place of registration. Being aware at the time of purchase that the vendor has previously sold or encumbered his interest in the land to a third person, and taking advantage of the latter's neglect to register his conveyance or security, renders such purchaser a participant in the fraud of his vendor, and therefore *particeps criminis*. Such purchaser, moreover, can gain no priority by earlier registration, as the object and effect of registering such prior deed or security was, as we have seen, effected at the time the purchaser received the requisite information through other channels (1).

The intention of the Act is to protect persons who acquire interests without notice of any adverse rights, but not to shelter those whose consciences are already affected by notice *aliunde* (2).

Intention
of the Act.

The defence of a purchaser for value is founded on the maxim, that where there is equal equity the law must prevail; and, so far from having an equal equity, a party has no equity at all against the true owner, if he buys knowing, or correctly believing, that his vendor has no title (3).

Under the English and Irish Acts, which contain language similar in effect to our own Act, it has, with one exception, always been decided that notice of a prior unregistered instrument defeated any priority gained by the registration of a subsequent instrument (4). The exception referred to occurred in the case of *Robinson v. Alsopp* (5), where it was held that notice of a prior unregis-

Notice
under
English
and Irish
Registry
Act.

(1) *W. & T., L. C.*, 37.

(2) *Lee v. Green*, 20 Jur., 176.

(3) *McLennan v. McDonald*, 18 Gr., at p. 508.

(4) *Gosling's case*, 3 Sim, 301; *Agra Bank v. Barry*, L. R., 7 E. & J. App., 135; *Eyre v. McDowell*, 9 H. L., 619.

(5) 5 Barn. & Ald., 142. See *Turnstall v. Trappes*, 3 Sim, 301.

tered instrument would not defeat a priority acquired by the registry of a subsequent instrument. This decision has, however, never been followed, and is now obsolete. In *Blades v. Blades* (1), Lord Chancellor King said that "a subsequent purchaser, with notice, getting his own purchase first registered, was a fraud, and the Court would never suffer any Act of Parliament made to prevent fraud to be a protection to fraud." Although it was at one time held that priority of registration was not lost through notice (2), a long series of decisions in our own Courts has determined that the Registry Laws were never intended to protect, and, in fact, do not protect, a person having notice of a right or interest which he seeks to defeat (3).

Under
American
Registry
Laws.

The Registry Laws of the several of the United States of America do not allow notice to interfere with the priority conferred by registration.

In France.

It is a settled doctrine in France that the most direct and actual notice will not supply the want of registration, so that a witness, or even a party to a prior unregistered instrument, is not precluded from acquiring the property comprised therein by a subsequent conveyance from the same grantor, and, by registering first, acquire priority.

Notice is either actual and positive, or constructive and implied.

"Actual
notice."
"Con-
structive
notice."

Actual and positive knowledge is that notice of the fact which is brought home directly to the party. Constructive notice, in its nature, is said to be "evidence of notice, the presumption of

(1) 1 Eq. Ca. App., 353, pl. 12. See *Lawless v. Kenny*, 1 H. & B., 377.

(2) *Doe d. Pell v. Mitchener*, Dra. 471.

(3) *McMaster v. Phipps*, 5 Gr., 253; *Forrester v. Campbell*, 17 Gr., 379; *Wigle v. Settrington*, 19 Gr., 512; *Severn v. McLellan*, 19 Gr., 220.

which is so violent that the Court will not allow even of its being controverted (1). Constructive notice has been held to apply in two cases; First, where the party had actual notice that the land was encumbered or charged, and he was therefore held to have had implied knowledge of facts and instruments, to a direct knowledge of which he would have been led by an enquiry after such charge or incumbrance; Second, where the party purposely abstained from making any enquiry in order to avoid knowledge. The former class rest upon the proposition that the party had actual notice of the relation of the facts or instruments affecting the land, and the latter upon the ground that the party evinced a purpose clearly demonstrating his suspicions of the truth, and a fraudulent determination not to learn it (2). But in the absence of actual notice, and of a fraudulent intention in turning away from a knowledge of the facts which the *res gestæ* would suggest to a prudent mind; if mere want of caution, as distinguished from wilful blindness, was all that can be imputed, the doctrine of constructive notice did not apply; and circumstances which might amount to a notice sufficient to put a party upon enquiry, will not necessarily prevail over a registered title, although it might be a sufficient notice in other cases (3).

Constructive notice was not, prior to the Registry Act of 1865, deemed sufficient to displace the prior registration of a deed, executed in good faith,

Prior to
Reg. Act
of 1865
constructive notice

(1) *Plumb v. Fluitt*, 2 Anst., 438; *Kennedy v. Green*, 3 M. & K., 719.

(2) *Jones v. Smith*, 7 Hare, 48. See *Ratcliff v. Barnard*, L. R., 6 Chy, 652; *Whitbread v. Gordon*, 1 Y. & C. Ex., 32.

(3) *Soden v. Stevens*, 1 Gr., 346; *Wyatt v. Barwell*, 19 Ves., 439; *Ferrass v. McDonald*, 5 Gr., 310.

not sufficient to displace prior deed. Constructive notice.

and founded upon value (1). But where an unregistered interest of a date antecedent to that Act, was not founded upon an instrument which was then capable of registration, constructive notice of such interest was held sufficient to enable it to prevail over a subsequent registered instrument (2).

Under the English and Irish Acts.

In England, constructive notice of an unregistered deed is as effectual as actual notice, but in Ireland that rule is somewhat modified (3).

Not sufficient in this Province to postpone prior registered deed.

In this Province, constructive notice is insufficient to postpone a prior registration, "actual" notice alone having that effect (4).

The words "without actual notice" did not appear in the corresponding sections of the Registry Act of 1868, or prior Registry Acts, being added by the Statute 36 Vic., cap. 17, sec. 7.

Definition of "actual" notice.

"Actual" notice has been said to be "satisfactory proof" that the person who registers the subsequent deed must have known exactly the situation of the persons having the prior deed, and knowing that, registered in order to defraud them of that title he knew at the time was in them (5).

"Actual" notice under Irish Reg. Act.

It has been held in a case arising under the Irish Act, that in order to affect the priority of a registered over an unregistered deed by reason of fraud in the grantor of the former deed, actual notice of

(1) *Ferrass v. McDonald*, *supra*; *Baldwin v. Duigman*, 6 Gr., at page 598; *Graham v. Chalmers*, 7 Gr., 597; S. C., 9 Gr., 231; *McCrumm v. Crawford*, 9 Gr., 337; *Moore v. Bank of B. N. A.*, 15 Gr., 303; *Soden v. Stevens*, *supra*; *Hollywood v. Waters*, 6 Gr., 329.

(2) *Moore v. Bank of B. N. A.*, *supra*, 308.

(3) *Wormald v. Maitland*, 35 L. J. Chy., 69; *Whitbread v. Jordan*, *supra*; *Nixon v. Hamilton*, 1 Ir. C. R., 57; *In re Allan's estate*, Ir. R. 1 Eq., 445.

(4) *Foster v. Beall*, 15 Gr., 244. See *Henderson v. Graves*, 2 E. & A., 9.

(5) *Jolland v. Stainbridge*, 3 Ves., 478. See *Irons v. Kidwell*, 1 Ves., Sr. 69; *Wyatt v. Barwell*, 19 Ves., 439.

the fraud must be fixed upon the grantee under such former deed (1).

"Actual" notice means actual notice of the title of the adverse claimant (2).

Registration is "actual" notice (3), and under Con. Stat. (U. C.), cap. 89, is notice of all registered instruments, whether registered before or since the Act 13-14 Vic., cap. 63, which first enacted that registration should operate as notice (4). Registration has been held in England and Ireland not to amount to notice (5).

It has been decided that registration is not notice under the Registry Act of Nova Scotia (6). The principle upon which registration amounts to "actual notice" does not, however, apply in the case of one parting with an interest in land (7).

"Actual" notice does not necessarily mean notification. It may be inferred from a person's admissions or recitals in a deed (8).

Possession does not amount to "actual" notice, being constructive only. In the case of an unregistered interest of a date prior to the Registry Act of 1865, not founded upon an instrument capable of registration, (constructive notice being deemed sufficient notice of such interest against a subsequent registered conveyance), it was held that possession of the property by the party claiming such

(1) *Agra Bank v. Barry*, L. B. 6 Ir. Eq., 128, 144; *In re Allen's estate supra*; *Wormald v. Maitland*, 35, L. J. Chy., 69.

(2) *Roe v. Braden*, 24 Gr., 589.

(3) *Bell v. Walker*, 20 Gr., 558; *Dunlop v. Township of York*, 16 Gr., 216. See *Menzies v. Kennedy*, 23 Gr., 360.

(4) *Vance v. Cummings*, 13 Gr., 25. See *Kay v. Wilson*, 24 Gr., 212.

(5) *Bushell v. Bushell*, Sch. & L., 90; *Latouche v. Dunsany*, Ib., 137; *Drew v. Lord Norbury*, 9, Ir. Eq., 171; *Hine v. Dodd*, 2 Atk., 275, 171, W. & T., L. C., 39.

(6) *Doe d. Hubbard v. Power*, 1 Allen, 271.

(7) *Trust & Loan Co. v. Shaw*, 16 Gr., 446. *Beek v. Moffatt*, 17 Gr., 601.

(8) *W. & T., L. C., 39.*

unregistered interest was sufficient constructive notice for that purpose (1). It was always held that possession could not amount to notice, when the claim was founded upon an instrument capable of registration (2).

**Waters v.
Shade.**

In *Waters v. Shade* (3) it was held that possession of land under a prior unregistered deed of the grantor, is not notice of such prior deed to a subsequent registered vendee; and that as such possession is consequent upon the prior sale and conveyance, and is grounded thereon, the Registry Act, in avoiding the prior deed for want of registration, avoids also the possession held under it. It was laid down in this case that a purchaser is not required either at law, or in equity, to visit the lands to ascertain who is in possession. The assurance of the person conveying the land, and who appears from the books in the Registry Office, to be owner and in possession, is sufficient to entitle the purchaser, upon paying his money, and receiving his conveyance on the faith of such assurance, to be protected against any person who is actually in possession under another deed, but who has neglected to register it (4).

Possession cannot prevail against registered title.

Possession, being constructive notice only, cannot prevail against a registered title (5). Possession has been held in England to amount to notice (6). Possession by a tenant of part of the estate has been held to be notice to a purchaser of the actual interest he may have either as tenant simply,

(1) *Moore v. Bank* B. N. A., 15 Gr., 308.

(2) *Ib.*

(3) 2 Gr., 457.

(4) See *Cochrane v. Johnson*, 14 Gr., 177.

(5) *Ib.* *Ferrass v. McDonald*, 5 Gr., 310; *McCrumm v. Crawford*, 9 Gr., 310; but see *Grey v. Coucher*, 15 Gr., 419.

(6) *Ho'mes v. Penny*, 8 D. M. & G., 572. See *W. & T., L. C.*, p. 39—*Barnhard v. Greenshields*, 9 *Moore P. C.*, 18.

or with right to purchase under an agreement to that effect (1). It has been said it would materially impair the security which men generally repose in a public Register, and greatly infringe upon the beneficent policy of the Registry laws, to charge the public with notice of any estate a party in possession might acquire. Possession should not, and, in fact, does not tend in such cases to put men upon enquiry. If a tenant in possession under a lease for a term of years were to purchase or otherwise acquire the reversion expectant upon the determination of the lease, and were to obtain a conveyance of such reversion and neglect to register such conveyance prior to the registration of a subsequent conveyance of the reversion executed by the lessor to a purchaser, for value without actual notice, the latter would not be deemed affected with notice of the lessor's fraud by the fact of the tenant being in possession (2).

To hold possession as actual notice would operate injuriously.

In *Grey v. Ball* (3), *Spragge v. C.*, says, *Grey v. Ball*.
"But it has already been held in this Court that possession *per se* is not notice to affect a registered title; and I apprehend it would not be that "actual notice" required by each of these Acts in order to affect priority of registration, as against a prior instrument: what is required in such a case is "actual notice of the prior instrument." * * * * It would be an anomaly, looking at the way in which equitable interests are

(1) *Daniels v. Davidson*, 16 Ves., 249; *Powell v. Dillon*, 2 Ball & B., 416; but see as to the contrary *Popham v. Baldwin*, 2 Jones, 320; *Wallace v. Lord Donegall*, 1 Dr. & Wal., 462; *Clark v. Armstrong*, 10 Ir. Ch., 263; *Forbes v. Deniston*, 4 Bro. P. C., 189; *Ryall v. O'Brien*, 1 H. & B., 718; *Crofton v. Ormsby*, 2 Sch. & L., 586.

(2) See *Lowther v. Carlton*, 2 Atk., 139.

(3) 23 Gr., at page 393; affg. *Bell v. Walker*, 20 Gr., 558.

dealt with by these Acts, to hold possession by the person having such interest *per se* notice against a registered title, when possession by a person having a 'prior instrument' would not be notice.' In this case the facts were that the plaintiff's brother bought certain lands for the plaintiff, and placed her in possession thereof, but afterwards obtaining the patent in his own name, he procured incumbrances to be created thereon which were duly registered. The Court held that the equitable title of the plaintiff could not prevail against the title of the incumbrancers, possession not being such notice of title as will affect the right of a person claiming under a registered conveyance.

Cooley *vs* Smith. The doctrine enunciated in the case last cited was approved of and followed in *Cooley et al. v. Smith* (1), which decided that knowledge of the possession by the defendant who claimed to have equitable interest was not sufficient to affect the registered title, and that the plaintiffs claiming under such registered title, had a right to recover.

The mere fact that an adverse claimant is in actual possession of the land is not sufficient notice, nor will it be "actual" notice even if the grantee is aware of the fact that a person other than his grantor is in possession (2). Nor is possession by an adverse claimant notice of interest to a person parting with the estate (3).

Possession under parol agreement held not notice. A parol agreement having been made between the vendor and a tenant in possession, unknown to the vendee under a registered deed, the possession of the tenant was held not to amount to clear

(1) 40 U. C. R., 543.

(2) *Roe v. Braden*, 24 Gr., 589.

(3) *Beck v. Moffatt*, 17 Gr., 601.

notice of such agreement so as to affect the vendee (1). under the Irish Act.

Whatever doubt might have been expressed as to the effect of possession so far as the same might operate as notice, such doubt was removed by the Registry Act of 1868. Where a father and son resided together upon certain land which belonged to the former, and continued to do so after a conveyance thereof had been executed by the father to the son, which conveyance was not registered; it was held, that the son's remaining in possession, after the execution of the deed from the father, did not affect a subsequent registered purchaser from the father, without notice of the conveyance to the son (2). In his judgment Vankoughnet C., after referring to the sixty-eighth section of the Registry Act of 1868 (3) said "the mere fact of possession by a claimant is not such (actual) notice, in my opinion, as the Legislature meant; and I think we must not fritter away their meaning by mere subtleties of construction or doctrine. The notice must be express and direct, and not arising out of circumstances or facts merely, which should put a party upon enquiry. I am of opinion, therefore, that there is no such notice shewn as could affect the defendant, the title being a registered one, and the transaction having taken place since the passing of the Act."

In *Harty v. Appleby* (4) it was laid down as a settled doctrine that in this Province possession is not notice as against a registered title. Settled doctrine that possession is not notice. Effect of

The effect of acquisition of actual notice is to

(1) *Rice v. O'Connor*, 11 Ir. Ch. Rep., 510.

(2) *Sherbouneau v. Jeffs*, 15 Gr., 574; see *Elsev v. Lutyens*, 8 Hare, 159.

(3) Similar to sec. 81 *post*.

(4) 19 Gr., 205.

acquiring
notice.

defeat any priority by registration which, but for that notice would prevail, and to place the party having notice in the same position as if the instrument of which he has notice is actually registered.

The plaintiff sold to E. and took back a mortgage, which, however, he omitted to register. Subsequently E. conveyed to defendant, who registered his deed before the registration of the mortgage. In an action of ejectment brought by the plaintiff upon his mortgage, the defendant closed his case without having put in and proved the plaintiff's deed from E. The learned judge at the trial would not permit the defence to be re-opened for that purpose, and as it appeared that the defendant was aware of the existence of the plaintiff's mortgage when he purchased from E., and was therefore setting up a dishonest defence, the Court refused to interfere; Robinson C. J. remarking, "a Court of Equity would certainly compel him (defendant) to pay the mortgage" (1).

A party who had notice of an incumbrance upon leasehold property by entering into partnership with the mortgagor, surrendered the lease and obtained from the owner of the estate a substituted lease to himself for 999 years, which lease he registered. He subsequently created several mortgages thereon, the original incumbrance being registered in the interval. It was held, that as his title had been acquired with notice of, and subject to, the original incumbrance which was registered before the mortgages created by the lessee, the original encumbrancers were entitled to prevail over the claims of the mortgagees of the lessee (2).

(1) *Blakely v. Garrett*, 16 U. C. R. 261.

(2) *Mackechnie v. Mackechnie*, 7 Gr., 23.

A purchaser from the heir-at-law with notice of the terms of the will, but under an erroneous impression that, according to the true construction of such terms, the land was not affected by it, cannot successfully set up, as against the claimant under the will, the defence of purchaser for value without notice (1). So where, prior to the Registry Act of 1865, the registered owner of land had parted with his interest therein by an unregistered deed, a person, who afterwards fraudulently took, and registered a conveyance from such registered owner, knowing or believing that his grantor had parted with his interest, was held not to be entitled to maintain his priority over the true owner, although he did not know, or had no correct information, who the true owner was (2).

Purchaser from heir-at-law with notice of an unregistered will of the ancestor.

Where an insolvent executed a fraudulent mortgage of all his unencumbered property to his son, to secure an alleged debt to his son, and a fictitious debt to his wife, and the son transferred his mortgage, for value, to a person who had notice of the insolvency, and of other circumstances, fitted to arouse his suspicions as to the *bona fides* of the mortgage; it was held, that he could not set up the defence of a purchaser for value without notice of the fraud (3).

Assignee of mortgage with notice of defect chosen.

It was held that the Registry Act of 1865 did not avoid a prior equity against a subsequent deed although registered first, where the latter was taken with notice of the adverse claim (4).

Prior equities not avoided by Reg. Act of 1865.

A lessee of a mortgagor, subsequent to the execution of the mortgage is bound thereby,

Lessee of mortgagor with no-

(1) *Smith v. Bonmisteel*, 13 Gr., 29.

(2) *McLennan v. McDonald*, 13 Gr., 502; see *Ferguson v. Kitty*, 10 Gr., 102.

(3) *Totten v. Douglas*, 16 Gr., 243.

(4) *Wigle v. Settrington*, 19 Gr., 512.

although the mortgage be not registered, provided he has notice of it (1).

A subsequent mortgagee, with notice, cannot avail himself of any misdescription in the first mortgage which would be corrected in equity as between the first mortgagee and mortgagor (2). Actual notice of an unregistered assignment of unpatented lands has the same effect upon the party affected with such notice, as if he had received actual notice of an unregistered conveyance executed after patent issued (3).

As between equitable encumbrances the rule equally obtains, that priority gained by registration will be defeated by notice (4).

But notice of a first mortgage does not impose upon the subsequent purchaser or incumbrancer the duty of making enquiries of the first mortgagee, so as to affect such purchaser, or encumbrancer, with notice of any further charges that might have been made (5).

The ground upon which a purchaser with notice is held to be bound thereby is, that no person having notice can, by contract, place himself in a more favorable position than that occupied by the party with whom he contracts; and, consequently, where the latter having created a charge affecting his lands, is not at liberty to enter upon any new contract, in derogation of the interests which he

(1) *Keech v. Hall*, 1 Dougl., 21; *Evans v. Elliot*, 9 Ad. & EL., 342; *Thunder v. Belch*, 3 East., 450; *Pope v. Briggs*, 9 B. & C., 254; *Doe v. Bucknell*, 8 Car. & P., 567, 1 Cal. R., 203.

(2) *Ib.*

(3) *Goff v. Lister*, 13 Gr., 406; 14 Gr., 451; see *Rykert v. Miller*, 14 Gr., 25.

(4) *Bethune v. Cauleutt*, 1 Gr., 87 per *Esten V. C.*

(5) *Credland v. Potter*, L. R., 18 Eq., 350.

has previously created, the former is placed under a similar restraint (1).

Refraining from enquiry, where a prudent person, under similar circumstances, would have made enquiries, may have the same effect as if the enquiry had, in fact, been made, and the necessary information had been elicited (2).

Nevertheless it is true that circumstances, which might amount to a sufficient notice, to put a person upon enquiry, will not necessarily prevail over a registered title, although sufficient in other cases (3). Where a purchaser of a mortgage had notice of the insolvency of the mortgagor, at the time he executed the mortgage, and also of other circumstances calculated to make him suspicious as to the *bona fides* of the mortgage, it was held, that he could not set up the defence of purchase for value without notice of the fraud (4). It was the duty of the purchaser in that case, prior to completing the purchase of the mortgage, to have satisfied himself by proper enquiries that the mortgage had been executed in good faith, and was valid against the mortgagor's creditors. His not doing so placed him in the same position as if he had actually made the enquiries and had learned the truth (5).

Gross negligence in reference to enquiring after prior encumbrances has been held in the English Courts to be equivalent to fraud (6).

(1) *Benham v. Keane*, 1 John & Hem., 685; 31 L. J. Ch., 129; *Sugden V. & P.*, 729.

(2) *Parker v. Whyte*, 1 H. & M., 170; *Jones v. Smith*, 1 Hare, 43; *Ogilvie v. Jeaffreson*, 2 Giff., 378.

(3) *Soden v. Stevens*, 1 Gr., 346; *Ferrass v. McDonald*, 5 Gr., 310.

(4) *Totten v. Douglas*, 16 Gr., 243.

(5) *Parker v. Whyte*, *supra*.

(6) *West v. Reid*, 2 Hare, 249; *Steedman v. Poole*, 6 Hare, 193; *Whitbread v. Jordan*, 1 Y. & C., (Ex.) 303.

Effect of
notice is
personal
only.

Grantee
for value,
without
notice, not
bound by
notice
given to
grantor.

The effect of notice upon a subsequent purchaser, or encumbrancer, is personal in its application, and is restricted to such purchaser, or encumbrancer, and those who claim, or derive title, under him as volunteers; but a person claiming, or deriving title, as a purchaser for value without notice, from such purchaser, or encumbrancer, will not be affected by the notice acquired by his predecessor.

A. demised to B. certain premises, and afterwards conveyed the reversion to C., who registered his deed prior to the registration of the lease. At the time of the execution of the conveyance from A. to C. the latter was aware of lease to B., and was therefore bound by such notice. C. subsequently mortgaged the premises to D., the latter having given value without notice of the lease: it was held, that D. had priority over B., as B.'s equity against C., arising from C.'s knowledge of B.'s claim, was personal in its application, and therefore could not affect D., who had given value without notice (1).

If one affected with notice, conveys to another who has no notice, the latter is as much protected as if no notice had ever existed (2). It was in one case, however, held that an equitable mortgagee, having notice of a prior unregistered deed, could not, by a transfer to a purchaser without notice, place the latter in a better position than that occupied by him (3). But this decision has not been viewed with favour and it is conceived that the doctrine enunciated by it is not sound law.

Tenant in
common

A tenant in common with notice, cannot rely

(1) *In re Flood's estate*, 13 Ir. Ch. R. 322; see *Beattie v. Mutton* 14 Gr., p. 690.

(2) *Wharton's Legal Maxims*, 41.

(3) *Ford v. White*, 16 Beav., 120; see *Chudwick v. Turner*, L. R., 1 Chy., p. 319.

upon his co-tenant's want of notice, on deriving title from him by partition (1).

Although the effect of notice is personal, as we have seen, and does not extend to a transferee for value, without notice, yet should the transferor at any time afterwards re-acquire the land, he will be bound by his former notice, the trust re-attaching to him (2).

So also a purchaser for value, with notice, is not affected thereby if he can trace title through a preceding purchaser, who had given value without notice of the adverse right. It may be stated as a general proposition that a purchaser for value, without notice of a prior unregistered instrument, may execute a valid conveyance to another, notwithstanding that the latter, at the time of the execution of such conveyance, has notice of the prior unregistered instrument, as he can rely upon, and be entitled to, the protection of the position occupied by such purchaser (3). Although the operation of notice upon the party affected therewith is personal, and does not extend beyond him and his assignees, claiming as volunteers, on the other hand the protection afforded by absence of notice enures, not only to the purchaser for value without notice, but also to all claiming through him; it being immaterial whether they have notice or not, upon the general ground, that to hold otherwise, a *bona fide* purchaser for value would be unable to enjoy and reap the full benefits accompanying his own unexceptionable title (4). Upon this ground it has been held, that where a

with notice.

When notice re-attaches as a trust.

Purchaser with notice will be protected if any one through whom he derives title gave value without notice.

Upon what prin-

- (1) *Blatchley v. Osborne*, 33 Conn. R., 226.
- (2) *Kennedy v. Daly*, 1 S. & L., 379.
- (3) *Rogers v. Shortis*, 10 Gr., 243; *Lowther v. Carlton*, 2 Atk., 139; *Beattie v. Mutton*, 14 Gr., p. 690, per *Spragge V. C.*
- (4) *Story Eq.*, s. 409.

ciple the
rule is
founded.

purchaser for value under a registered deed, without notice of an unregistered encumbrance or equity, subsequently sells the land, but prior to such sale, both he and his vendee acquire notice of such encumbrance or equity, the vendee will take the title freed therefrom; for the sale relating back to the registration of the deed to the vendor, the vendee is entitled to be placed in the vendor's position at the date of such registration, according to the maxim "*Assignatus utitur jure auctoris.*" Except under circumstances where the trust would re-attach a purchaser with notice may protect himself by buying up and taking a conveyance of the title of some other purchaser, who gave value without notice (1).

Rule in
Equity as
to legal
rights be-
ing affect-
ed by sub-
sequent
disclosed
equities.

It is a rule in Equity never to allow a legal right to be displaced by an equity subsequently disclosed. Nothing can be clearer than that a purchaser for value, without notice of a prior equitable right, and obtaining the legal estate at the time of his purchase, is entitled to priority in equity, as well as at law, in accordance with the maxim "where the equities are equal, the law will prevail" (2). But where the purchaser has notice, so far from having an equal equity he has none at all against the true owner, where he buys knowing, or correctly believing, that his vendor had no title (3).

Actual no-
tice bind-
ing in
equity.
By whom
given.

"Actual" notice has always been treated as binding in Equity (4).

Actual notice should be given by a party inter-

(1) *Bumpas v. Platner*, 1 Johns. Ch., 213; *Jackson v. Given*, 8 Johns., 137; *Schafer v. Reilly*, 50 N. Y. (5 Sick.), 61, 63; *Webster v. Van Steenberry*, 46 Barber, 211.

(2) *Pilcher v. Rawlins*, 7 L. R., 7 Chy. App., p. 259; *Peterkin v. McFarlane*, 15 U. C. L. T. (N. S.), 98 4 App. R., 25.

(3) *McLennan v. McDonald*, 18 Gr., at p. 508.

(4) *Davis v. Earl of Strathmore*, 16 Ves., 419.

(1)
(2)
(3)
(4)
9 H
(5)
List

ested in the property, and in the course of treaty for the purchase (1).

But where notice of a prior right or claim was given to an intending purchaser by a son of an encumbrancer, and while acting on behalf of the latter, it was held, that the notice was properly given, and that it bound the purchaser (2).

A purchaser is not necessarily bound to listen or give heed to vague reports, or flying rumours made or circulated by mere strangers (3). Owing, however to the difficulty of laying down any particular standard by which it may be ascertained what do, and what do not, constitute loose and indiscriminate rumours or reports, each case must necessarily rest upon, and be decided by, the peculiar circumstances connected therewith (4).

It is generally sufficient that notice should be received by the party to be affected thereby before he has parted with his money, or has placed himself in such a position that he cannot resist payment, or where third parties may have acquired rights against him (5). A purchaser completed his purchase, and paid over the purchase money, without notice of an outstanding equity, and the conveyance was executed; but after its execution, and before its registry, a bill claiming the equity was filed and certificate of *lis pendens* was registered; it was held, that the purchaser did not thereby lose his defence as a purchaser for value without notice, as registration before acquisition

(1) *Wildgoose v. Wayland*, 1 Goulds., 147, per Lord St. Leonards.

(2) *McNames v. Phillips*, 9 Gr., 314.

(3) *Jolland v. Stainbridge*, 3 Ves., 478; *Kerns v. Serope*, 2 Watts, 75.

(4) *Eyre, v. Dolphin*, 2 B. & B., 301; *Hewitt v. Loosemore*, 9 Hare, 449.

(5) *Peterkin v. McFarlane et al.*, 4 App. R., 25; *Collinson v. Lister*, 20 Beav., 356; 7 D. M. & G., 634; *Kerns v. Serope supra*.

of notice was not essential to entitle such defence to be set up (1).

Before
money
paid over.

The locatee of lands executed a bond to convey the same, but after the issue of the patent to him, he conveyed the lands to another person, who in his turn, sold and executed a conveyance thereof, to a purchaser for value. Before either the purchaser from the patentee or his vendee had paid his purchase money, the plaintiff, who was the holder of the bond, having registered it, filed and served upon the purchaser and his vendee a bill of complaint, setting forth the bond and praying for specific performance. It was held that neither the purchaser nor his vendee was in a position to plead as a purchaser for value without notice, and that the plaintiff was entitled to specific performance with costs (2).

Before
mortgage
monies
fully paid.

Formerly where the purchaser paid a part of the purchase money in cash or equivalent, and executed a mortgage to his vendor to secure the residue of the purchase money, his priority might have been defeated by acquiring actual notice of an adverse claim subsequent to the execution of the mortgage, but before he had paid the whole of the moneys secured by the mortgage. In other words, it was not sufficient to protect such a purchaser that the residue of the purchase money should have been secured to have been paid, but the money must have been actually paid over (3). This doctrine proving most inequitable and unjust in depriving purchasers of the fruits of their pur-

(1) *Sanderson v. Burdett*, 16 Gr., 119; see *Essex v. Baugh*, 1 Y. & Coll. C. C., 620; *McNeill v. Cahill*, 2 Bl., 228; *Elsey v. Lutyens*, 8 Hare, 159; *Riddick v. Glennon*, 6 Ir. Jur., 39.

(2) *Casey v. Jordan*, 5 Gr., 467.

(3) *Henderson v. Graves*, 2 E. & A., 9; *Hudson v. Warren*, 1 Ha., 57; 2 W. & T. L. C., 49.

chases and leaving them in many cases without any remedy it was enacted by 39 Vic., c. 7, s. 11 (amended by 40 Vic., c. 7 sched. A., 115), that "it shall in no case be necessary, in order to maintain the defence of a purchase for value without notice, to prove payment of the mortgage money or purchase money or any part thereof" (1). In a late case in the Court of Appeal the harsh policy of the former rule is fully commented upon (2.)

The notice should be acquired in the same transaction (3). Generally speaking, if notice be acquired in a prior transaction it will have no binding effect (4), unless under such circumstances that the Court is satisfied that it could not have been forgotten (5); as if one transaction is closely followed by, and connected with, another (6).

Notice to an agent is notice to the principal (7). Notice to agent is notice to principal. W. claiming, as heir-at-law to his father, mortgaged to a bank certain lands, which he alleged had descended to him as heir-at-law. As a matter of fact, the father had executed a will, by which the mortgaged property, together with other portions of his estate, were devised to his five sons, including W., to be equally divided among them. The bank official, through whom the mortgage was taken, was aware that the father had made a will, but understood that the mortgaged estate had been

(1) See Rev. Stat. (Ont.), c. 95, s. 9.

(2) *Peterkin v. McFarlane*, 4 App. R., 25.

(3) *Warrick v. Warrick*, 3 Atk., 294; *Ogilvie v. Jeaffreson*, 6 Jur. N. S., 979; *Twycross v. Moore*, 13 Ir. Eq. R., 250.

(4) *Hine v. Doid*, 2 Atk., 275; *Worsley v. Earl of Scarborough*, 3 Atk., 290; *Lowther v. Carlton*, 2 Atk., 139.

(5) *Hargreaves v. Rothwell*, 1 Keen, 154.

(6) 2 W. & T. L. C., 56; *Richards v. Brereton*, 5 Ir. Jur., 336.

(7) *Jennings v. Moore*, 2 Vern., 609; *Le Neve v. Le Neve*, 3 Atk., 651; *Tunstall v. Trappes*, 3 Sim., 286; *Richardson v. Brereton* *supra*; *Lenahan v. McCabe*, 2 Ir. Eq., 342; *Sheldon v. Cox*, 2 Ed., 228.

devised to W. alone. It was held, that there had been sufficient notice to put the officer upon enquiry as to the estate devised to W., and that the claim of the bank was confined to the interest of W. only; the bank being bound by the notice to their officer (1).

Notice to one of several grantees or trustees is notice to all.

Notice to one of several grantees is notice to all (2). The same rule applies in the case of notice to one of several trustees (3), but not to a mere trustee (4).

Notice to the Solicitor is notice to the Client.

Actual notice to the solicitor is imputed notice to his client (5), being based upon the presumption that the solicitor communicates to the client such information as he himself possesses (6).

Does not apply where Solicitor guilty of fraud.

The doctrine of imputed notice does not apply, however, where the solicitor is guilty of the commission of fraud which he conceals from his client; as the presumption that he will communicate his own fraud does not arise in such a case (7). B., as solicitor for K., invested £3,000 for her upon mortgage of leaseholds, and then, by a fraud, induced her to assign her interest to him. After purchasing the equity of redemption, he purported to convey the leaseholds to one Kirby, his father-in-law, for whom he also acted as solicitor. It was held by Brougham L.-C. that B., though acting as K's solicitor, could not be presumed to

(1) *McIntosh v. The Ontario Bank*, 19 Gr., 155.

(2) *Blades v. Blades*, 1 Eq. Ca. Ab., 358; *Davis v. Earl of Strathmore*, 16 Ves., 419.

(3) *Ex parte Rogers*, 8 De G., M. & G., 271; *Willis v. Greenhill*, 29 Beav., 387.

(4) *In re Lane*, 5 Ir. Jur. (N. S.) 32; *In re Burmester*, 9 Ir. Ch., 41.

(5) *Fuller v. Bennett*, 2 Hare, 394; *Tucker v. Henzill*, 4 Ir. Ch., 513; *in re Rorke*, 13 Ir. Ch., 273; *Tunstall v. Trappes* *supra*.

(6) *Bradley v. Riches*, L. R., 9 Chy. Div., 189; *Espin v. Pemberton*, 2 De. G. & J., 547; *Rolland v. Hart*, L. R., 6 Chy., 678.

(7) *Hiorns v. Holton*, 16 Beav., 259; *re European Bank*, L. R., 5 Chy., 358-362; *Waldy v. Gray*, L. R., 20 Eq., 230.

have communicated his own fraud to his client, so as to affect the latter with notice (1).

But if the fraud is not independent of some fact, consisting merely in the concealment, the general doctrine of notice to the solicitor being notice to the client obtains, and in such a case, notice is imputed to the client, it being the duty of the solicitor to have communicated all that it was his duty to communicate. For example, P. gave a first mortgage to Mrs. W. (who took the legal estate) and then mortgaged the equity of the redemption to L., a solicitor, who sub-mortgaged his interest to certain parties. Subsequently P., Mrs. W. and L., suppressing L.'s sub-mortgages, conveyed their respective interests to one Wallis, L. acting as solicitor for all parties. Wallis was held to be affected with notice of the sub-mortgages (2). Collusion between one party and the solicitor of the other party, for the purpose of committing a fraud upon the latter, will not affect the latter with notice thereof (3).

It has been laid down that where both parties employ the one solicitor, each party is affected with notice of whatever such solicitor has notice of, in his capacity as solicitor, in the transaction in which he is employed (4). So, if the mortgagor and mortgagee engage the same solicitor, the mortgagee will be chargeable with notice to him through such solicitor, even though the title be made under the direction of the court and the

(1) *Kennedy v. Green*, 3 M. & K., 699.

(2) *Atterbury v. Wallis*, 8 DeG., M. & J., 451; see *Boursol v. Savage*, L. R., 2 Eq., 134; *Rolland v. Hart*, 6 Chy., App., 678; *Bradley v. Riches*, *supra*.

(3) *Sharpe v. Foy*, L. R., 4 Chy., 35.

(4) *Harrison v. Wiltshire*, 4 L. J. Chy., 260; *Fuller v. Bennett*, 2 Hare, 394; *Driffel v. Goodwin*, 23., Gr., 431; *Taylor v. Blacklow*, 6 L. J. C., p. 14; see remarks of *Burns J.*, *Henderson v. Graves*, 2 E. & A., p. 18.

But it does apply if fraud consists of mere concealment.

Where both parties employ the same solicitor.

purchase be made by trustees on behalf of an infant (1).

Mortgagor
acting as
mort-
gagee's
solicitor.

It has even been held, that if the mortgagor act as the mortgagee's solicitor, notice to the former will affect the latter, if acquired in *res gestæ* (2).

These cases appear to extend the doctrine of imputed notice to an unreasonable limit. It is not essential that a mortgagee or purchaser should retain a solicitor upon his behalf; that is a mere matter of discretion. Where, therefore, the vendor or mortgagor happens to be a solicitor, the non-employment by the purchaser or mortgagee of a third party as his solicitor should not be taken as warranting the presumption that the vendor or mortgagor acts in that capacity. Some satisfactory proof should be adduced to show that he was expressly requested to act as solicitor for the purchaser or mortgagee (3).

Where
vendor
acts as
solicitor.

If a solicitor buys property from his client, and, upon a re-sale of it, acts as solicitor for the purchaser, the latter has notice of the defects, if any, in the title (4). Where A., a solicitor, and the owner of certain lands, executed a mortgage to B., which, by arrangement, was not registered; and afterwards A. demised to C. the latter not having any personal knowledge of the mortgage, it was held, that as A. was C.'s solicitor, the latter had notice of the mortgage, and his lease was declared postponed thereto (5). When an attorney

(1) *Toulmin v. Steere*, 3 Mer., 310.

(2) *Dryden v. Frost*, 3 M. & C., 673; *Hewitt v. Loosemore*, 9 Hare, 499; 21 L. J. (Chy.) 69.

(3) *Espen v. Pemberton*, 4 Drew, 333; 3 De G. & J., 547; see *Rykert v. Miller*, 14 Gr., 25; see *Henderson v. Graves*, 2 E. & A., p. 18.

(4) *Spencer v. Topham*, 2 Jur. (N. S.), 365.

(5) *In re Rorke's estate in Appeal*, 14 Ir. C. L. R., 442; see *Marjoribanks v. Hovenden*, 6 Ir. Eq., 242; *Hewitt v. Loosemore*, *supra*.

sells his own land to a layman, he is not necessarily considered to be the layman's attorney, so as to impute to the latter notice acquired by such attorney (1).

The notice to the solicitor, which will be imputed to the client, must be notice acquired in the particular transaction in which the solicitor is engaged. The "same transaction" when the same solicitor is engaged will include any continuous dealing with the same title (2).

The doctrine of imputing to the client, notice acquired by the solicitor, is confined to cases where the latter acts as the adviser; notice acquired by the agents of the solicitor not affecting the client (3).

The *onus* of proof rests upon the client to rebut the presumption that the solicitor would communicate to him the fact, notice of which by the solicitor would otherwise be imputed to the client (4).

Suspicion of notice, though strong, is not sufficient to justify the postponement of a registered title (5). As suspicion of notice does not amount to notice (6); evidence of such notice must

(1) Rykert v. Miller, *supra*.

(2) Fuller v. Bennett, 2 Hare, 394; 2 W. & T. L. C., 56; Lenchman v. McCabe, 2 Ir. E., 342; Perkins v. Bradley, 1 Hare, 219; Hargreaves v. Rothwell, 1 Keen, 154; Brotherton v. Hatt, 2 Vern., 574; Wilde v. Gibson, H. & L. C., 614; Hine v. Dodd, 2 Atk., 275; Richards v. Brereton, 5 Ir. Jur., 336.

(3) Wythe v. Pollen, 3 De G. J. & S., 596; 32 L. J. (Chy.), 782 per Jessel M. R.; Foxon v. Gascoigne, L. R. G. Chy., p. 658 note.

(4) Thompson v. Cartwright, 33 Beav., 178-185; but see S. C., 2 De G. J. & S., 10; Greenshields v. Barnhart, 3 Gr., 1.

(5) Hine v. Dodd *supra*; Jolland v. Stainbridge, 1 Sim. (N. S.), 106; 3 Ves., 478; in re Burmester, 9 Ir. Ch., 410; Ford v. White, 16 Beav., 20; in re Morrison, 1 Ir. Jur., (N. S.), 282.

(6) Marjoribanks v. Hovenden, 1 Dr. & W., 11; 6 Ir. Eq. R., 238; Nixon v. Hamilton, 2 Dr. & Wal., 364; 1 Ir. Eq. R., 46; Rolland v. Hare, L. R., 5 Chy., 678; Lenchman v. McCabe *supra*; Wormald v. Maitland, 35 L. J. (Chy.), 69; Clarke v. Armstrong, 10 Ir. Ch. R., 263.

be quite clear and direct. In one of the earlier cases upon the Registry Laws of this Province it was held, that in order to effect a postponement of a registered title upon the ground of notice of a previous unregistered deed, the evidence must be quite satisfactory and distinct (1). In *Wyatt v. Barwell* (2) Sir William Grant said, "it is only by actual notice, clearly proved, that a registered conveyance can be postponed."

So clear as
to suggest
fraud.

A registered title can only be affected by clear and distinct notice amounting to fraud (3); and the evidence thereof should be so positive, that the mere fact of inattention thereto would appear, to a person of ordinary judgment and sagacity, as equivalent to a fraud (4).

A purchaser having acquired title under a registered deed, which was expressed to be subject to "existing leases" and lettings made to under-tenants of the vendor, it was held, that an unsigned parol contract, coupled with part performance, was not "an existing lease" within the meaning of the deed; and, that as he had not express notice of such alleged parol contract the purchaser was not bound thereby, there not being that clear and undoubted notice necessary to affect a party claiming under a registered deed (5). In this case, as it afterwards appeared that there was written evidence of such a contract for a lease, the judgment of the Master of the Rolls was reversed; and it was held, that the purchaser was bound to execute a lease according to the terms of such agreement.

(1) *Hollywood v. Waters*, 6 Gr. 329.

(2) *Ves.*, 439.

(3) *Re Chadwick v. Turner*, L. R., 1 Ch., 310.

(4) *In re Burmester supra*; *Hine v. Dodd supra*; *Jolland v. Stainbridge*.

(5) *Rice v. O'Connor*, 11 Ch. R., 510.

although he had no express notice of the terms (1).

When it is desirable to set aside the prior registration of a subsequent instrument, for other than actual knowledge of the prior instrument, it should be satisfactorily established, that the party registering such subsequent instrument must have known exactly the situation of the persons having the prior deed, and claiming thereunder; and, possessing that knowledge, registered such subsequent instrument, for the purpose of defrauding them of that title which he knew at the time was in them (2).

As actual notice is not confined to notification, evidence of such notice may be derived from admissions (3) of the purchaser, or from a recital in the deed, or through any other usual channel of evidence tending to shew knowledge (4). With regard to notice obtained through recitals contained in a deed it has been held, that where an agreement in relation to the valuation of certain lands was unregistered, but an instrument referring to, and containing a recital of, such agreement was registered, the recitals could not affect the plaintiff's title, as the agreement itself was not registered (5). On the other hand it has been decided, that where a second mortgage is executed, which recites the first mortgage and is made expressly subject to it, the registration of such

What
should be
establish-
ed.

Notice
may be
inferred
by ad-
mission,
&c.

Through
recitals.

(1) S. C. in appeal, 12 Ir. Ch. L. R., 424.

(2) *Jolland v. Stainbridge*, 3 Ves. Sr., p. 485.

(3) *Wigle v. Settrington*, 19 Gr., 512.

(4) *W. & T. L. C.*, p. 39; see *Barnhart v. Patterson*, 1 Gr., 159; *Biddulph v. St. John*, 2 Sch. & L., 51; *Stuart v. Ferguson*, *Hayes*, 452.

(5) *Rutledge v. McLean*, 12 U. C. R., 295; *Delesderniers v. Kingsley*, 3 L. C. R., 81; see *Honeycomb v. Waldron*, 2 St., 1061; *Williams v. Sorrell*, 4 Ves., 339; *Roe et al. v. McNeill et al.*, 1 U. C. L. J. (N. S.), 111.

second mortgage, before the first mortgage is registered, will not confer priority upon such second mortgage (1).

The *onus* of proving actual notice to a person, devolves upon the party alleging such notice.

Simple denial of notice not sufficient in pleading.

A simple denial of notice is not sufficient in pleading. A purchaser for value without notice, who is charged in a bill, setting up a prior legal or equitable right to the land in question, with notice of such prior right, cannot plead as his sole defence in his answer, that at the time of his purchase he had no notice of the plaintiff's claim, and that the consideration which he paid was actual and *bona fide*. He must go further and negative the acquisition of notice before paying his purchase money, or receiving the conveyance (2). Under most of the Registry Acts in the United States it has been held that notice of a prior unregistered instrument preserves its priority (3).

The subject of notice is further alluded to in the notes on sections 78 and 80 *post*.

Instrument claiming priority should be executed by party having title.

Assuming that the prior registered deed has been founded upon valuable consideration, and taken without actual notice, it is nevertheless essential, in order to retain the priority gained by such registration, that such deed should have been executed by the person holding the title at the time of execution; as the registration of a deed, executed by a person having no title, or, what is

(1) *Waters v. Shade*, 2 Gr., 467 *per* Esten V. C.; see *Hunter v. Kennedy*, 1 Ch. Rep., 148, 225; *McAlpine v. Swift*, 1 Ball & B., 285.

(2) *Prince v. Brady*, 16 Gr., 875; see *Barker v. Eccles*, 17 Gr. 277; *Kitchen v. Kitchen*, 16 Gr., 232.

(3) *Farnsworth v. Childs*, 4 Mass., 637; *Hewes v. Wiswell*, 8 Greenleaf (Me.), 94; *Rogers v. Jones*, 8 N. H., 264; *Forrest v. Warrington*, 2 De Sauss., 254; *Roads v. Symmes*, 1 Ohio, 281. &c., &c.

equivalent thereto, a fraudulent title, does not give priority to that deed over a deed from a person having a good title, but subsequently registered (1). Registration of a void title will not confer any priority upon it, either against the owner or against any one else (2).

There is a distinction to be drawn, however, where a deed is executed by a stranger to the title, and where a second deed is executed by a grantor after the title has passed out of him by virtue of a prior deed. In the former case the grantee will derive no title as against the holder of the title and his grantees. In the latter, although the general rule is that where the owner of the land conveys the same to a purchaser for value, he ceases to retain any interest or estate therein capable of disposition or transmission by him to any other party, and any attempt, therefore, upon his part to afterwards sell or charge such lands, will be nugatory and void at common law, the Registry Act nevertheless enables him to execute a second conveyance to another purchaser for value, who, upon registering the same, without notice of the first conveyance, will obtain priority over the first conveyance; the latter being, by force of the statute, fraudulent and void as against the grantee of the second conveyance and those claiming under him (3).

Where an heir-at-law, without being aware of a previous transfer by his ancestor, conveys in good faith to a purchaser for valuable consideration without notice, and the purchaser registers his deed before the ancestor's deed is registered, the

Where executed by a stranger to the title.

Where by a grantor after a title passed out of him.

By heir-at-law without notice of transfer by ancestor.

(1) Doe d. Spafford v. Breakenridge, 1 U. C. P., 492.

(2) Stuart v. Brunson, 3 L. R. C., 309.

(3) Bruyere v. Kuox, 8 U. C. P., 520, per Draper C. J.

purchaser will retain priority as against the vendee of the ancestor, although no estate descended to the heir by reason of the conveyance from the ancestor. But this is by force of the statute alone (1). A purchaser for value, without notice, from the heir-at-law, or from a devisee, who registers his conveyance, will retain priority against any unregistered conveyance from the ancestor or testator (2). In a case decided in the New Brunswick Courts a deed from an administrator under a license to sell for payment of debts was held to be good against a *bona fide* purchaser for value from the heir, although the deed of the latter was first registered, and the application for the license was not made until nine years after the ancestor's death (3).

By assignee in insolvency after conveyance by insolvent.

As an assignee in insolvency only takes the title of the insolvent, and acquires no further or better title under the deed of assignment than is in the insolvent at the date of such deed, he cannot obtain priority by means of prior registration over a *bona fide* vendee of the insolvent, under a deed executed by the insolvent antecedent to the execution of such deed of assignment, but not registered until after the registry thereof: as nothing passes in such a case under such deed of assignment (4).

Lands to which grantor has no title. Title passing by estoppel.

Registration of a conveyance does not affect any lands comprised therein to which the grantor has no title (5).

If a grantor, having no title, purports to convey to a purchaser for value, with a warranty, and,

- (1) *Waters v. Shade*, 2 Gr., 458.
- (2) *Bythwood Conv.*, 692; *Blades v. Hughes*, 1 Eq. Ca. & Ab., 358.
- (3) *Doe d. Bowen v. Robertson*, 5 Allen, 134.
- (4) *Collver v. Shaw*, 19 Gr., 598.
- (5) *Waters v. Shade*, 2 Gr., 457.

(1)
149:
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subsequently thereto, should acquire the title, that title passes *eo instante* from him to the purchaser and his assigns by way of estoppel. Under such circumstances, nothing could pass from such grantor to a subsequent purchaser, although contrary to the intent of the Registry Act, and the well established maxim "*nemo plus juris ad alium transferre potest quam ipse habet*" (1).

Priority of registration is also conditional upon the registered instrument passing the estate purporting to be conveyed thereby at the time of its execution. A subsequent passing of the title will not relate back to the date of the registration so as to give such instrument priority over an instrument registered subsequent to the registration of the former, but anterior to the passing of the title thereunder. A registered mortgage, which, at the date of its execution was ineffectual to pass the wife's estate by reason of her not having been examined apart from her husband, was subsequent to its registration, re-executed by the husband and wife, and the statutory examination had, and certificate thereof endorsed upon the mortgage, but no re-registration took place; it was held, that the registration was sufficient, under the statute, but that the examination of the wife, upon the re-execution of the mortgage, would not have relation back to the first execution of the mortgage. An instrument affecting that land had, subsequent to the registration of the mortgage, been executed by the husband and wife, and duly regis-

Priority
conditional
that
estate
passes at
time of
execution

(1) Com. Dig. Estoppel, E 10; *Lyster v. Burroughs*, D. & W., 149; *Eyre v. Dolphin*, 2 B. & B., 290; *Gubbins vs. Gubbins*, D. & W., 160, in notes; *Doe d. Hennessy v. Myers*, 2 O. S., 424; *Doe d. Irvin v. Webster*, 2 U. C. R., 224; *Doe d. Tiffany v. McEwan*, 5 O. S., 598.

tered; it was held that such instrument obtained priority over the mortgage (1).

Priority of registration of defective conveyance. As a deed so defectively executed as not to pass the title, is, however, evidence of a contract to convey, it is conceived that the registration of such deed is equivalent to a registration of such contract and will retain priority as such (2).

Of articles of agreement. Registration of articles of agreement to convey lands will give them priority over a subsequent conveyance of such lands (3).

Of voluntary deed validated by after-acquired consideration. Registration of a deed voluntary in its creation, but afterwards rendered valid from consideration subsequently arising (4), confers upon such deed, the same priority as if it had been founded upon valuable consideration *ab initio*, in favour of a party claiming thereunder as a purchaser or mortgagee for value (5), but not as against the parties to such deed, and those claiming under them, as volunteers; for as to them priority of registration only takes effect from the time the after consideration arises (6). An instrument executed in good faith, though without valuable consideration, will be valid and retain priority against a subsequent purchaser from the grantor, provided such voluntary conveyance be duly registered before the execution of the deed to, and before the creation of a binding contract for the conveyance, to such subsequent purchaser (7).

Peculiar effects of registration. Under some circumstances registration has peculiar effect.

- (1) *Beattie v. Mutton*, 14 Gr., 686.
- (2) *Davis v. Earl of Strathmore*, 16 Ves., 418; see *Bishop on Contracts*, s. 585.
- (3) *Thompson v. Simpson*, 1 D. & W., 459; see *Rochard vs. Fulton*, 7 Ir. Eq., 131.
- (4) See p. 221 *ante*.
- (5) *In re Flood's Estate*, 13 Ir. Ca. R., 312.
- (6) See p. 222 *ante*.
- (7) See *Stat. 31, Vic., c. 9*; *Richardson v. Armitage*, 18 Gr., 512.

Registration of an instrument is evidence of, ^{Amounts to delivery.} and tantamount to, a complete execution thereof by delivery (1); although such registration is not an act of part performance of a parol contract, such as will entitle a party to relief in Equity. Where the vendor alone executed a conveyance and registered it; it was held that such registration was not such an act of part performance as would place him in a position to ask the Court to compel the defendant to carry out the sale (2). Under the New Brunswick Act it has been held that as between the grantor and the grantee, the registry of a deed transfers the title and possession by relation from the delivery of the deed, but it will not affect the intermediate rights of third parties not privy to the deed (3). It has also been held under that Act, that a deed registered thereunder does not of itself amount to such a possession as will enable the grantee to maintain trespass against a person, in actual adverse possession of the land, who took possession thereof subsequent to the registration of such deed, and the plaintiff's entry thereunder (4).

The registration in a County Registry Office has ^{Under Statutes of Mortmain.} been held sufficient to make a deed valid under the Statutes of Mortmain without requiring enrolment in Chancery (5).

Registration of an instrument as a deed is con-

(1) *Mair v. Dunnett*, 11 Gr., 85; *Childers v. Childers*, 3 K. & J., 310, 315; 1 De G. & J., 487, 495; *Bishop on Contracts*, s. 763; *Gammon v. Jockey*, 2 Sup. Ct. (Nova Scotia), Rep., 314; *Parker v. Hill*, 1 Met., 447; *Trust & Loan Co. v. Covert et al.*, 32, U. C. R., 2-2; 1, App. R., 26; 1, Sup. Ct., R., 564.

(2) *Hawkins v. Holmes*, 1 P. Wms., 770.

(3) *Patterson v. Tingley*, 5 All., 553; see *Doe d. Bridges v. Quant*, East. T., 1828; *Stevens' Digest* (N. B.), 445.

(4) *Dunham v. King*, *Trinity T.*, 1831; *Stevens' Digest supra*.

(5) *Halleck et al. v. Wilson*, 7 U. C. P., 28; *Mercer v. Hewston et al.*, 9 U. C. P., 349; *Hambly v. Fuller*, 22 U. C. P., 141.

clusive against its testamentary character (1); but where an instrument requires certain formalities, registration is not evidence of such formalities having been complied with (2).

When defendant estopped from denial of registered title. A defendant in an action of ejectment is estopped from denying the title of the plaintiff being a non-registered one, where it comes through the defendant himself; particularly where the objection was not taken at the trial (3).

Surrender at law. The registration of a deed operating in law as a surrender, is not equivalent to the registration of an actual deed or instrument of surrender (4), nor does the registration of a deed containing covenants extend such covenants beyond their original import (5).

Binds Railway Companies. The Registry Act is binding upon Railway Companies (6), and on Municipal Corporations (7).

A plea setting up registration of an instrument is good, although the registration may have been effected after action brought, but before plea filed (8).

Frauds on Act remedied in Equity. Frauds upon the Registry Act will be relieved against in a Court of Equity (9).

Registration of mortgage. Registration of a mortgage protects the equitable title of the mortgagor to the same degree as it protects the legal title of the mortgagee, and confers priority upon such equitable title. A mortgagee under a registered mortgage while

(1) *Majoribanks v. Hovenden*, 1 Drn., 11.

(2) *Re Higgins*, 19 Gr., 303; *Tiffany v. McCumber*, 13 U. C. R., 159.

(3) *Garrett v. Blakely*, 9 U. C. P., 46.

(4) *Powell v. Kelly*, 10 Ir. L. R. (Q. B.), 192.

(5) *Chandos v. Brownlow*, 2 Ridg. P. C., 428.

(6) *Harty v. Appleby*, 19 Gr., 205; see *Reg. v. Smith*, 43 U. C. R., 369.

(7) *Dunlop v. Township of York*, 16 Gr., 216.

(8) *Carlisle v. Whaley*, L. R., 2, H. of L., 391.

(9) *Curtis v. Perry*, 6 Ves., 739; *Osborne v. Williams*, 18 Ves., 379; *Battersby v. Smith*, 3 Madd., 110.

in possession made a lease ; in an action by the mortgagor against the lessee to recover possession the latter set up title as a purchaser without notice, and also relied upon an acknowledgment having been given which would bind him. It was held that the registration of the mortgage gave priority to the mortgagor's equitable title, which rendered notice immaterial, and that the acknowledgment by the mortgagee alone was sufficient as against the lessee (1).

It was the opinion of Esten V. C., that the Registry Act of 1846, and the statute 13-14 Vic., cap. 63 did not affect equitable liens or mortgages (2), and it was shortly afterwards held that the latter statute made no change in the rights of equitable encumbrancers (3). But, as between equitable encumbrancers themselves, it was held, that priority may be acquired by prior registration, subject to such priority being defeated by notice (4).

The subject of registration as it affects equitable interests is referred to in the notes upon section eighty-one *post*.

Neglect upon the part of a person to register an instrument will have the effect of postponing or defeating such instrument as between him and a subsequent purchaser or encumbrancer for value, without notice ; and it matters not if the registration has been prevented by the fraud of a subsequent purchaser, provided he has in the meantime conveyed to a third party for value without notice (5). It is important therefore that registration should

Rights of
equitable
incum-
brance or
liens.

Neglect to
register.

(1) Ball v. Lord Riversdale, Beat., 550.

(2) Hughson v. Davis, 4 Gr., 588.

(3) McMaster v. Phipps, 5 Gr., 253.

(4) Bethune v. Caulcutt, 1 Gr., 81; Ferrass v. McDonald, 5 Gr., 310.

(5) Doe d. Nellis v. Matlock, 2 O. S., 487.

be effected promptly, in order to protect the rights of the person claiming thereunder as against third parties (1). A vendor took from the purchaser a mortgage for part of the consideration money, but did not register it until some months after the deed to the purchaser had been registered; in the meantime the mortgagor created a second incumbrance in favour of *bona fide* mortgagees, which was registered long before the first mortgage, without notice thereof; held, that the want of a receipt for the consideration money upon the purchaser's deed was not sufficient to postpone the second incumbrance (2). A consent to the effect that a prior registered mortgage should be postponed to a subsequent one, notwithstanding such prior registration, will not, unless registered, have that effect against an assignee of such prior mortgage for value without notice (3).

A person claiming under an unregistered title from the patentee of the Crown, must register the title to protect himself against any subsequent deed or mortgage made for valuable consideration (4).

Omission
to register
mort-
gages.

Where a vendor neglected to register a mortgage, taken to secure unpaid purchase money, it was held that he could not repudiate the mortgage, and revert to his vendor's lien, as against a subsequent encumbrancer who registered before the mortgage was registered (5). If a mortgagee neglect to register his mortgage, a lessee from the mortgagor in possession without notice of the

(1) See *Listowel v. Gibbings*, 9 Ir. C. L., 223.

(2) *Baldwin v. Duignan*, 6 Gr., 595; see *Barnhart v. Green-shields*, 9 Moore P. C., Ap., 18.

(3) *Campbell v. McDougall*, 26 Gr., 280.

(4) *McCarthy v. Arbuckle*, 29 U. C. P., 5.

(5) *Burgess v. Howell*, 8 Gr., 37. See *Boucher v. Smith*, 9 Gr. at page 352.

mortgage will not be affected thereby, and the mortgagor will be bound by the demise in like manner, as if such demise had been made prior to the execution of the mortgage (1).

If a vendor conveys land to a purchaser under an agreement that the latter will execute a mortgage to the vendor to secure the purchase money, which agreement is not registered, and executions against lands are filed in the Sheriff's Office against the purchaser, they will prevail over the agreement (2).

An unregistered mortgage is invalid against the lessee of the mortgagor without notice of such mortgage (3). So it has been held that until the purchaser of real estate has registered his deed, the creditors of the vendor may subsequently to the sale obtain a valid, legal or judicial hypothec on such property (4).

If a creditor takes a mortgage or other conveyance of property from his principal debtor in security for his debt, but neglects to register such instrument, whereby the property is lost as a security, such omission on his part amounts to that degree of negligence which will discharge the surety to the extent that he is injuriously affected by such non-registration (5).

But where a rule of Court provided that a recognizance for the payment of the rent of the property in charge of the Court should be registered, and a lien on the property of a lessee was lost by the failure of the Clerk of the Court to

Neglect of creditor to register securities.

Neglect by officers of the Court to register.

(1) Jackson v. Loughbread, 2 Johns., 75; Keech v. Hall, 1 Doug., 21.

(2) Galt v. Bush., 8 Gr., 360.

(3) Hilliard Mt'ges, 174.

(4) Lefebvre v. Bauchand, 1 Legal News, p. 230.

(5) Walf v. Jay, L. R., 7 Q. B., 756; Stratton v. Rastall, 2 J. R., 366; see Wrixon v. Vize, 4 Ir. Eq., 468.

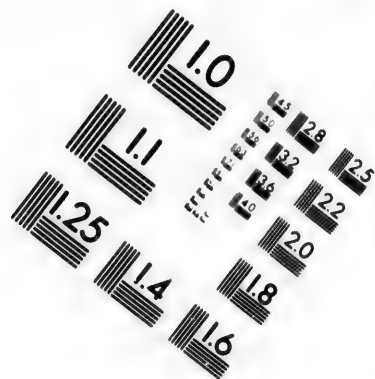
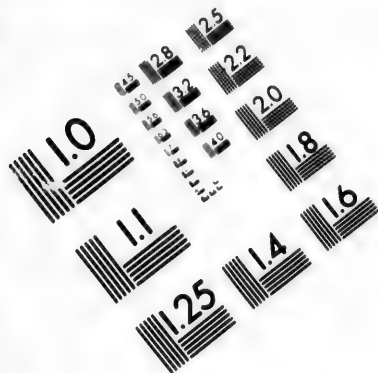
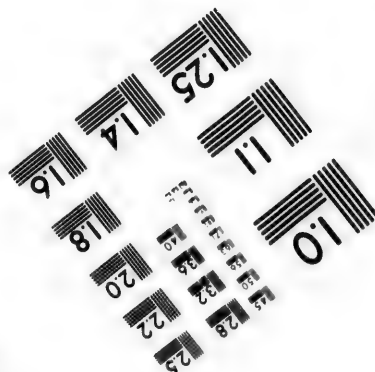
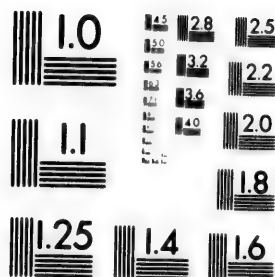


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register, it was held, that the surety for the rent was not discharged; upon the ground that the rule of Court was not made for the benefit of sureties, and that the owner of the property should not be prejudiced by the negligence of the officers of the Court (1).

By Trustees.

Trustees are personally responsible if they neglect to register an instrument requiring registration (2), and one entrusted with another's money to invest is liable for any loss occasioned by his not registering the security (3).

By Solicitors.

When an instrument requiring registration is committed to the care of the solicitor, it is his duty to register the same, and if he neglects to do so, he will be liable to his client for any loss sustained through such neglect (4); especially if the requisite fees for registration have been advanced to him by the client for that purpose (5). The action against the solicitor being substantially for breach of contract is maintainable without shewing any actual damage (6).

The solicitor is also responsible in law for all damages occasioned by his negligence in searching for encumbrances (7). Where a deed was not reg-

(1) *Jephson v. Maunsell*, 10 Ir. Eq. R., 38; affirmed *ib.*, 132.

(2) *Macnamara v. Carey*, Ir. R., 1 Eq., 9; *Lester v. Lester*, 6 Ir. Ch. R., 513.

(3) *Holmes v. Thompson*, 38 U. C. R., 232; *Peters v. Weller*, 30 U. C. R., 4.

(4) *Plant v. Pearman*, 41 L. J., (Q. B.), 169.

(5) *Lynch et al. v. Wilson*, 22 U. C. R., 226.

(6) *Doan v. Warren et al.*, 11 U. C. P., 423; see as to liabilities of solicitor in investigation of titles, &c., *Ross v. Strathy*, 16 U. C. R., 430; *Darling et al. v. Weller*, 22 U. C. R., 363; *Peters v. Weller supra*; *Crosby v. Murphy*, 8 Ir. C. L., 301; *Stevenson v. Rowand*, 2 Dow. & C. L., 104.

(7) *Hamilton v. Lyster*, 7, L. E. R., 660; *Brooks v. Day*, 2 Dick., 572; *Firshall v. Cole*, 7 Vin. Ab., 6 pl. 65 M. S.; *Green v. Jackson Peake*, 236; *Ireson v. Pearman*, 3 B. & C., 799; 5 D. & Ry., 687; *Temple v. McLachlan*, 2 New Rep., 136; *Parker v. Rolls*, 14 C. B., 691.

istered owing to neglect, a subpoena to show cause why it should not be registered was issued against the party whose duty it was to cause its registration (1).

An unregistered conveyance of land operates as a release if the vendee is in possession at the time; if he takes possession immediately after, it may operate as a feoffment (2).

Operation of unregistered conveyance.

Under the Registry Acts non-registration is a proof of fraud as against any subsequent registered conveyance, independently of any consideration whether the person executing the first was, or was not, the same person who executed the second (3).

Non-registration is proof of fraud.

The want of registration, however, invalidates the instrument as against subsequent purchasers and encumbrancers only; it has no effect as against the assignees of the party conveying (4).

Effect of want of registration.

A mortgage, though not registered, is good *inter partes*, and those claiming through, by or under them (5).

The object of the Registry Laws being only to protect subsequent purchasers, they do not invalidate a conveyance, on account of its non-registration, as between the party taking the conveyance and him who conveys and his assigns in bankruptcy. Nor does a deed of assignment acquire any greater force by virtue of its registration than it originally possesses, as against an earlier unregistered instrument. A registered deed of assign-

(1) *Siddenham v. Harrison*, Cary, 97.

(2) *Doe d. McKay v. Allen*, 2 All., 19.

(3) *May on Fraud*, Conv., 226.

(4) *Ex parte Coles v. Rucken*, 1 Dear & Ch., 100; 1 L. J. (N. S.) Chy., 18; *Jones v. Gibbon*, 9 Ves., 407; *Hodson v. Sharpe*, 10 East., 850; Cf. *Willis v. Brown*, 10 Sim., 127; *McNeill v. Cahill*, 2 Bligh, 228; *Patterson v. Tingley* 5 All., 553.

(5) *Salmon v. Clagett*, 3 Bland., 126; *Andrews v. Burns*, 11 Ala., 691; *Moore v. Thomas*, 1 Oregon, 201; *Howard v. McIntyre*, 3 Allen, 571.

ment will not, therefore, cut out or postpone a prior unregistered deed from the insolvent, founded upon valuable consideration, taken without notice of the grantor's insolvency, and otherwise valid according to the provisions of the Insolvent Act (1). Held, that until the purchaser of real estate has registered his title, the creditors of the vendor may, subsequently to the sale, obtain a valid legal or judicial hypothec or mortgage on such property; sale, without registration, having no effect as regards third parties (2).

Inconsistent conveyances by same grantor.

Where inconsistent conveyances are executed by the same grantor, that last registered, although postponed, is personally binding upon the grantor and those claiming under him as volunteers; and the property comprised in the deed first registered is bound, after satisfying the trusts raised by the deed first registered, by the contents and trusts of the deed last registered (3).

Where, through a mistake in a registered deed, a portion of the property intended to have been conveyed was omitted, and a judgment was afterwards registered against the vendor, it was held, that the judgment did not affect the portion so accidentally omitted (4). Where deeds are not registered they will take effect according to the priority of time of execution or delivery as at Common Law.

Omission to register all deeds in chain of title.

Omission in the registration of any of the deeds in the chain of title will prejudice one in making out his title in an action at law (5), and may

- (1) *Collver v. Shaw*, 19 Gr., 599; *Jones v. Gibbon* *supra*.
- (2) *Lefebvre v. Bauehand*, 1 *Legal News* (Q.), 230.
- (3) *McNeill v. Cahill*, 2 *Bligh*, 228.
- (4) *McMaster v. Phipps*, 5 Gr., 253.
- (5) *Kitchen v. Murray*, 16 U. C. P., 69.

render a vendor incapable of requiring a vendee to carry out his purchase (1).

A term of years was vested in B. for life with remainder to E., his daughter. Upon her marriage with W. she and B. conveyed by deed to trustees to the use of B. for life, remainder to W., the intended husband, for life, remainder to E., remainder over. This deed was unregistered. After B.'s death, W. being in possession, conveyed by a registered deed. W. then died. It was held, affirming the ruling of the Court of Exchequer, that the latter conveyance had priority over the unregistered settlement, and was therefore valid as against E. claiming thereunder after W.'s decease (2).

It may be observed, that the lien upon the land of a person insured in a Mutual Insurance Company does not require registration to preserve its priority (3).

75. All wills or the probates thereof registered within the space of twelve months next after the death of the testator or testatrix, shall be as valid and effectual against subsequent purchasers and mortgagees, as if the same had been registered immediately after such death; and in case the devisee or person interested in the lands devised in any such will is disabled from registering the same within the same time by reason of the contesting of such will or by any other inevitable difficulty without his or her wilful neglect or default, then the registration of the same within the space of twelve months next after his or her attainment of such will or probate thereof, or the removal of the impediment aforesaid, shall be a sufficient registration within the meaning of this Act. 31 V., c. 20, s. 65.

Wills not registered within a certain time to be void as against, &c.

The provisions relating to the registration of wills are generally introduced in the Provincial and Imperial Registry Acts by way of proviso or exception. They are intended to grant a greater

Provisions as to wills are inserted by way of exception.

(1) *Brady v. Walls*, 17 Gr., 699.

(2) *Warburton v. Loveland*, 1 Hud. & B., 623; affirmed on appeal, 6 Bli. N. S., 1.

(3) *Montgomery v. Gore District M. Ins. Co.*, 10 Gr., 501; see *ex parte Hill*, 2 Chy. Cham. R., 348.

indulgence to wills, when registered in pursuance of the regulations prescribed or laid down in such provisions, than is accorded to deeds and other instruments; wills so registered having a relation back to a period antecedent to the date of registration, viz., to the death of the testator; thus retaining their priority against any purchasers or mortgagees claiming under the heir-at-law, under instruments executed by him, subsequent to the death of the testator but prior, to the registration of such will (1).

Principle on which this exception is based.

This exception to the general policy of the Registry Act, which requires a prompt registration of instruments affecting lands to ensure priority, is no doubt based upon the circumstance that wills have always been looked upon as being in the nature of secret transfers or conveyances. From the character of such instruments, and the circumstances usually accompanying their publication, it may be difficult, and in some instances impossible, for devisees or others beneficially interested to effect an immediate registration. A will being frequently committed to the custody or guardianship of those whose interest may be, in their own opinion, better served by suppressing or concealing the will from the knowledge of those entitled thereunder, it would be a manifest injustice to impose upon the devisees and those entitled under such will as prompt a registration thereof as is required in other cases. Such a requirement would, as one can easily see, aid and assist the heir-at-law and others in knowingly committing fraud, by defeating the objects of the testator. A will is, in contemplation of law, a deed (2).

(1) Wilson, 16.

(2) Doe d. Baker v. Clark, 7 U. C. R., 44.

As the Irish Registry Act does not contain a clause declaring unregistered wills to be void against purchasers, &c., or specifying any period within which registration should be effected, the registration of wills in Ireland is of rare occurrence (1).

Under the Registry Act of 1795 registration of wills was optional, and was confined to those executed by a testator dying within this Province (2); and the period within which registration, if made, would relate back to death of testator was limited by that Act to six months from date of death (3).

The Registry Act of 1846 extended the provision of registration of wills to such as were executed by testators dying abroad; and the period of six months was enlarged to twelve months (4).

The English Registry Acts distinguish between wills executed by testators dying abroad, and those dying within the United Kingdom, by extending the period within which registration should be effected in order to obtain the benefits of the Acts to three years from date of testator's death, in the case of wills coming under the former class; while the period of registration allowed to devisees under wills coming within the latter class is only six months from the testator's death.

This distinction has not been recognized in any of the Ontario Registry Acts; though it may be a subject worthy of consideration whether a reasonable extension should not be allowed to devisees, and others interested, under wills executed by testators dying abroad. Two years would not

(1) *Fury v. Smith*, 1 H. & B., 759; *Madden*, 27.

(2) *Doe d. Eberts v. Wilson*, 4 U. C. R., 386.

(3) Sec. 15.

(4) Sec. 12.

appear to be an unreasonable limit in such cases. It has been said that this absence of distinction is compensated for, by not requiring the cause of the difficulty preventing the registration of the will to be registered (1).

Registry
within 12
months
equivalent
to registry
immedi-
ately after
decease.

The registration of wills within twelve months next after the death of the testator is declared to be, by this section, as valid and effectual as against subsequent purchasers and mortgagees, as if the same had been registered immediately after such death. In other words, that the death of the testator and the registration within the year are to be taken as inseparably connected and continuous acts; and that any conveyance, or other instrument executed by the heir at law, will not have any force or effect against such devise, provided the devisee registers within twelve months from the death of the testator.

Conse-
quence of
neglect to
register
will with-
in pre-
scribed
period.

Failure or neglect on the part of the devisee or other interested party to register the will within the proper time, (unless within the exception contained in this section,) does not render the will void against subsequent purchasers or mortgages from the heir-at-law *after* the registration of the will (2). But the will is void as against those purchasers and mortgagees from the heir-at-law who register before the will is registered. It was remarked, however, by Lord Justice Turner that, although the Registry Act provided that wills should be valid if registered within the specified time, yet, on the other hand, the Act imported a negative to the effect that they should be invalid unless so registered (3).

(1) *McLeod v. Truax*, 5 O. S., p. 459.

(2) *Rigge*, 84 n.

(3) *Chadwick v. Turner*, L. R., 1 Chy., 310, 376.

The language of the English Registry Act as to the registry of wills has given rise to doubts, whether, in case a will is not registered within the prescribed period, a good title can be made thereunder without the concurrence of the heir-at-law. It has been suggested that a will, registered after the expiry of the statutory period will be void against a purchaser or mortgagee from the heir-at-law, without notice of the will. Although the language of the Acts occasions some difficulty in pronouncing upon their meaning, it is conceived that, except for the purpose of fixing some limit within which the heir-at-law cannot deal with the estate to the prejudice of the devisees, the time for the registration of a will is directory only; and, that as to wills not registered in due time, although by the Act they are made void against purchasers and mortgagees from the heir-at-law, so long as such wills remain unregistered, yet as soon as they are registered they take effect and obtain priority against such purchasers and mortgagees subsequent to the registration of the will (1).

The analogy between wills and conveyances must not, it is said, be carried too far; for it does not follow that a purchaser for valuable consideration from the heir-at-law, subsequent to the expiry of the prescribed limit of twelve months, and while the will is unregistered, will be postponed thereto by reason of its registration before his own conveyance is registered. It is not the policy of the several Registry Acts to place a devisee upon the same footing as a purchaser, so far as regards the advantage afforded by registration, but to protect purchasers against unregistered deeds (2).

(1) See Davidson Con. 769; Rigge, 84 n.

(2) Chadwick v. Turner L. R., 1 Chy., 310, 376.

Practice in
England
to obtain
consent of
heir-at-
law.

It appears to be the practice in England to require the concurrence of the heir-at-law in a conveyance from the devisee to a purchaser from the latter where the will has not been registered (1). In order to allay all doubts arising as to the priority of a will registered after the statutory period, but before the registry of a conveyance from the heir-at-law, it was enacted by the Vendor and Purchaser Act of 1874 (Imp. Stat., 37-38 Vic., cap. 78, sec. 8), that when "the will affecting lands in Middlesex or Yorkshire has not been registered within the period prescribed by law in that behalf, an assurance of such lands to a purchaser or mortgagee, executed by the devisee, or by some one deriving title under him, shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law."

Where de-
visee is
also heir-
at-law.

Where the devisee would be heir-at-law, had the testator died intestate, the will need not be registered under this section (2).

Bequest of
leaseholds

When leasehold estates are bequeathed by will, and the executor assents in writing to the bequest, the legatee's title must be protected by registering the instrument containing the assent (3). A verbal assent is of course incapable of registration (4). It has been said that registration of a will bequeathing leasehold estates is unnecessary to the validity of such bequest, as no title can be shown thereto without notice of the will (5). It is conceived, however, that it is essential to register such will in order to protect the legatee where the

(1) Dart V. & P., 5 Ed., 682.

(2) Wilson, 21.

(3) 3 Bythewood, 5.

(4) Williams v. Sorrel, 8 Jur., 389.

(5) Sugden V. & P., 546.

leasehold estate extends beyond the term of seven years (1).

The words "subsequent purchasers and mortgagees" refer to purchasers and mortgagees from the heir-at-law, and not to purchasers and mortgagees from the ancestor or testator. The Act avoids conveyances and mortgages executed by the heir-at-law as against a devisee from the testator, provided the devisee registers the will within twelve months from the date of the death of the testator, or the removal of any impediment referred to in this section. The registration of such will within the above mentioned period can, of course, have no effect upon purchasers or mortgagees from the testator, who register their conveyances or mortgages after the testator's death, but prior to the registry of the will. Such last mentioned purchasers and mortgagees will retain priority against the devisee.

"Subsequent purchasers," &c.

Although a devisee, being a volunteer, will not, by prior registration of the will, be able to obtain priority against a purchaser from the testator for value, yet the vendee of such devisee, for value and without notice of the testator's deed, will retain priority against the latter, provided the will and the conveyance from the testator are first registered (2).

The Act extends the time for registering the will, where the devisee or other party interested is prevented from registering within the twelve months next after the testator's decease by reason "of the contestation of the will or by any other inevitable difficulty" not arising from his wilful neglect or default, in which case registration,

Extension of time for registry of will.

(1) See notes to section 37 *ante*.

(2) McDonald v. McDonald *et al*, 44, U. C. R., 291.

within twelve months next after the attainment of the will or removal of the impediment, is permitted.

What
amounts
to "an in-
evitable
difficulty."

It is manifestly impossible to state what circumstances shall be deemed an "inevitable difficulty" within the meaning of this section. Each case must depend upon its peculiar incidents. As to what impediments cannot be classed as "inevitable difficulties" there have been, however, some deci-

Infancy.

sions which are important to be noticed. Infancy was held not to be an "inevitable difficulty," to excuse an infant devisee from registration, under the corresponding provision contained in the Registry Act of 1795 (1). That statute required a will to be registered through a memorial under the hand and seal of one or more of the devisees his heirs, executors, administrators, *guardians, or trustees*. Since the Registry Act of 1865, as wills are registered through deposit of a copy sworn to by one of the subscribing witnesses, requiring no act or concurrence whatever on the part of an infant devisee, the plea of infancy would have less weight than it possessed during the period prior to that

Coverture.

Act. Nor can coverture, insanity, or absence from the country be set up as "inevitable difficulties" by the devisee with any more force than the plea

Insanity.

of infancy. "When infancy, coverture, unsoundness of mind, or absence beyond seas are meant to be admitted as exceptions, they are usually enumerated, and the Legislature are in the constant use of a phraseology applied to that purpose." (2)

Absence
from
country.

Execution
of will
abroad.

The mere fact that the will is executed abroad, without more, cannot be set up as an "inevitable

(1) *McLeod v. Truax*, 5 O. S., 455, approved of in *Mandeville v. Nicholl*, 16 U. C. R., 609.

(2) *McLeod v. Truax*, 5 O. S., p. 459.

difficulty." In *Doe. d. Eberts v. Wilson* (1), Robinson C. J. said "If by reason of the testator dying abroad, or the will being deposited abroad it had not come to the knowledge of the devisee, then, on that fact being shewn (though our Act does not, like the English Acts, provide expressly for wills concealed or suppressed), the case might be reasonably held to come under the condition of "inevitable difficulty." * * * It would be a most violent construction, which should hold the mere fact of a will being made anywhere out of the Province to create an inevitable difficulty in the way of registering it." In this case the will was executed in the State of Michigan, and therefore it was not difficult to obtain information of it, or to get possession. But in the case of a will executed in Europe, where the devisee is unable to register such will within the twelve months next after the decease of the testator, either from his not obtaining knowledge of such will being executed, or of the death of the testator, or from his not being able to ascertain where the will is deposited, or from the refusal of the parties with whom the will is deposited to surrender it; it is submitted that a clearer case of "inevitable difficulty" could not exist. The language of the section referring to registration by the devisee within twelve months next "after the attainment" of the will presupposes that the devisee has not the possession or control of the will, and if he cannot obtain the possession of the will, though he endeavour to do so, it is apprehended that it is immaterial what the cause may be which prevents his attaining ing possession, so long as he is not guilty of wilful default or neglect.

(1) 4 U. C. R., 386.

In order to constitute a difficulty "inevitable," it is essential that the difficulty should exist throughout the period of twelve months (1).

Non-discovery of will.

It has, however, been decided that non-discovery of a will is not an "inevitable difficulty." G. died in January, 1854, equitably entitled in fee to certain freehold premises in Kingston-upon-Hull. No will having been found, her heir-at-law entered into possession, and in June, 1862, mortgaged to the plaintiff, which mortgage was registered in July, 1862. In June, 1861, a year before the execution of the mortgage, G.'s will dated 21st April, 1841, was discovered by G.'s sister, who, having no interest in the matter, gave no notice of the discovery of the will to the devisees. In September, 1863, G.'s sister discovered a codicil to the will dated 7th December, 1853, when she communicated the fact of her finding the will and codicil to her solicitor, who thereupon informed the devisees. The heir-at-law refused to admit the title of the devisees. The plaintiff, in November, 1863, filed a bill for the foreclosure of his mortgage against the heir-at-law and the parties claiming under the will and codicil, and asked for a decree declaring that the will and codicil should be postponed to the mortgage. At the date of the filing of the bill, neither the will nor the codicil had been registered, but in February, 1864, they were both registered. The Master of the Rolls directed an enquiry to be made whether the mortgagor was heir-at-law to G., and that if it should appear that he was, the plaintiff's mortgage should have priority over the will and codicil (2). From this decree the devisees appealed; it was held on

(1) *Re Davis*, 27 Gr. 199.

(2) *Re Chadwick v. Turner*, L. R., 1 Ch., 310.

appeal, affirming the judgment of the Master of the Rolls, that no protection is given to devisees under a will which has not been discovered by them until the expiration of the time limited by the statute after the death of the testator (1). In this case it will be observed that the will was discovered a year before the mortgage was executed, so that with due diligence it might have been registered before the mortgage, and so have obtained priority.

Does suppression or concealment of a will amount to an "inevitable difficulty" within the Act? Suppression, &c., of will,

Our statute is silent upon this point. In the corresponding clause of the Act 7, Anne, cap. 20; Provision in English Registry Acts. reference is expressly made to the possibility of the will being suppressed or concealed, and enacts that where such is the case, the purchaser from the heir-at-law shall hold his title indisputably, unless the will is duly registered within five years from the date of the testator's death. A similar provision, but limiting the period within which the purchaser's title can be disturbed, to three years from date of purchase, is contained in the Act 8, Geo. II., cap. 6.

It may be argued, from the absence of any allusion in the section under consideration to the suppression or concealment of the will that the general policy of the Act, being to require immediate and prompt registration, except in so far as wills are concerned, such policy will obtain in the absence of anything not expressly mentioned in this section by way of exception or reservation; and that as the legislature has not especially excepted cases of suppression or concealment, it would be

(1) S. C. in app.

more consistent to leave the person injured by such suppression or concealment to such remedies as may be open to him, against the party causing such suppression or concealment, than to transfer the consequences of the latter's wrongdoing to innocent purchasers or mortgagees. To this it may be replied, with equal force, that if a devisee is protected under this section by his inability to obtain possession of a will by reason of its contestation, of the existence of which he must, therefore, certainly be well aware, is not his claim for protection better founded where the will is suppressed or concealed by those who, by doing so, derive a direct advantage therefrom, and of the execution and existence of which will the devisee is purposely kept in ignorance (1)?

Memorial
of fact of
contesta-
tion, &c.,
under
Irish &
English
Acts.

Amend-
ment sug-
gested.

The Irish Registry Act, and the several English Registry Acts, with the exception of the statute 2 & 3 Anne, cap. 4, require a memorial of the fact of a contestation or existence of some other "inevitable difficulty" to be registered within the period prescribed for the registry of the will in the case no contestation or difficulty occurs. That no similar requirement exists in our Registry Act for the registration of some instrument, such as a certificate duly sworn to, is to be regretted; as, in the present position of the Registry Law, a purchaser for value from the heir-at-law, after the expiration of twelve months from the death of the ancestor, and in the absence of registration of the will, of which he has no notice, is liable to be defeated by a subsequent registration of the will by the devisee, provided the devisee can satisfactorily prove that he was disabled from registering sooner,

(1) See *Stephens v. Simpson*, 12 Gr., 493; s. c. in app., 15 Gr. 594; *Re Davis*, 27 Gr. 199.

by reason of the will being contested or, from the existence of some "inevitable difficulty" and that he had registered within twelve months next after the removal of that impediment. The purchaser, in such a case, can hardly derive consolation by being informed, that although our Registry Act comes short of the Irish and English Registry Acts in this respect, the defect is counterbalanced by the devisee being entitled to the benefit of the excuse from registering, so long as his disability arising from the causes mentioned in this section exist (1). It is submitted, further, that this section is defective in not requiring that some proof of the date of the testator's death, or of the cessation of disability to register should accompany the registration of a will, in order that, upon the face of such registration, it may *prima facie* appear to have been regularly made within the respective periods prescribed by the section.

The Act requires, however, that the cause of "Wilful disability must not arise from the "wilful neglect or default " of the party registering the will. What will be deemed a " wilful neglect or default," so as to deprive a devisee or other party interested from the benefits of this section must of course depend upon the circumstances surrounding each case. It has been said, that it would be repugnant to hold that mere knowledge by the devisee, or other party interested, of the contents of a will, which is not forthcoming, would amount to a " wilful neglect or default," the statute making no distinction between the devisee who knows, and one who is ignorant of, such will or its contents (2).

The phrase "shall be a sufficient registration

Meaning
phrase

- (1) McLeod v. Truax, 5 O. S., 459. See p. 268 ante.
- (2) Chadwick v. Turner, L. R., 1 Ch., 317.

"sufficient within the meaning of this Act" evidently means registration, &c., "a registration, equivalent in its effects to a registration made within twelve months next after the testator's death had no impediment occurred (1).

Operation
of section.

It is to be observed that the section, in declaring unregistered wills to be fraudulent and void as against subsequent purchasers and mortgagees from the heir-at-law, operates only in favour of those purchasers and mortgagees who have given value, and who have acted in good faith; these requisites being essential, under the Act, to the validity of prior registration. The failure of the devisee, or other party interested, to register the will within the proper time, does not confer any advantage to a grantee from the heir-at-law, if he be not a *bona fide* purchaser for valuable consideration (2). A conveyance by the heir-at-law, for a nominal consideration, which was registered before the will, notwithstanding that the latter was registered subsequent to expiry of the twelve months next after the testator's death, has been held not to defeat or postpone the devisee claiming under the will (3). So, where the plaintiff claimed under a will, and the defendant claimed title under a deed from the heir-at-law, registered before the will was recorded, it was held, that, to give priority to such deed, it should be proved that it was given for valuable, although not necessarily for a money, consideration (4). Though the grantee of a conveyance from an heir-at-law, registered prior to the registration

(1) Wilson, 18.

(2) Doe d. Ellis v. McGill, 8 U. C. R., 224.

(3) Wilkinson v. Conklin, 10 U. C. P., 211; see Doe d. Major v. Reynolds, 2 U. C. R., 311; Doe d. Prince *et al.* v. Girty, 9 U. C. R., 41; Baby *qui tam* v. Watson, 13 U. C. R., 531.

(4) Bondy v. Fox, 29 U. C. R., 64.

of the will within the statutory period, may not have given any valuable consideration therefor, it is clear that his assignee for value without notice of the will and before registry thereof will retain priority (1). But in such a case, should the will be registered prior to the conveyance to the assignee, the latter's title will be defeated: as the registration of the will being notice thereof, the assignee cannot claim any priority by virtue of the position of his assignor, for the latter, having given no value, had no priority as against the devisee.

It is no objection to the registration of a will, changed in its most material contents, or otherwise, that it affords no information upon the face of it what lands are affected by it; such a devise will pass the title as against a subsequent purchaser from the heir-at-law (2). Semble, that under the old law, a will was sufficient to pass the estate though unregistered, where no previous transfer of the property had been registered (3).

Will need
not partic-
ularize
lands de-
vised.

It will be seen, from a consideration of this section, and the decisions bearing thereon, that an intending purchaser from the devisee should insist upon the will being duly registered, and satisfy himself that it is registered within the proper time. Where it can be obtained, the most prudent plan is to secure, in addition, the concurrence of the heir-at-law, unless he should also be the devisee (4).

Result of
decisions.

It has been said that descent to the heir, and transmission of leaseholds to the executor, are not within the provisions avoiding devises under unregistered wills, and that a registered purchaser

Lease-
holds.

(1) See page 222 *et seq.*

(2) Doe d. Lowry v. Grant, 7 U. C. R., 125.

(3) Doe d. Link v. Ausman, Tay., 227.

(4) See p. 270 *ante*.

from the heir or executor would be entitled to priority over an unregistered purchaser from the deceased (1). A purchaser from a party apparently entitled by devolution or act of law, who registers his deed, will not be defeated by a prior unregistered deed of the ancestor, or by his will, if the same be not registered in pursuance of this section (2). A person who purchases land from the heir-at-law with notice of the terms of the will, but under an erroneous impression as to its proper construction, cannot set up, as against the claimant under the will, the defence of a purchaser for value without notice (3).

Under the New Brunswick Registry Act it has been held, that a deed from an administrator, under license to sell for payment of debts, was valid against a *bona fide* purchaser, for value, from the heir; although the deed of the latter was first registered, and the application for the license was not made until nine years after the death of the ancestor (4).

In 1831 A. devised his farm to his widow in fee, and left her in possession. The will was never registered, and shortly after the testator's death his eldest son and heir went into possession with his mother, and so continued until his mother's death in 1854; the son managing the farm, and being the reputed owner during this period. After his mother's death he was in sole possession, and in 1862 he mortgaged the premises to a person who had no notice of the unregistered will, or of the widow's title; it was held, affirming the decree

(1) David Con. vol. 2, 770. (u) dissenting from Mr. Dart.

(2) Bythewood Conv., 692; see *Blades v. Blades*, 1 Eq. Ca. Ab., 358, pt. 12.

(3) *Smith v. Bonnisteel*, 13 Gr.; 29.

(4) *Doe d. Bowen v. Robertson*, 5 Allen, 134.

in the Court below, that the widow's heirs could not claim the property against the mortgagee (1).

The best evidence of intestacy is the production of the letters of administration (2).

76. Every deed made by a Treasurer or other officer for arrears of taxes shall be registered within eighteen months after the sale by such Treasurer or other officer; and all deeds of Registry lands sold under process issued from any of the Courts of Law of deeds or Equity in Ontario shall be registered within six months after on sales the sale of such lands; shall not be deemed to have preserved for taxes their priority as against a purchaser in good faith who has registered his deed prior to the registration of such deed from the sales Treasurer or other officer. 31 V., c. 20, s. 58. See also *Rev. under pro. Stat., c. 180, s. 151.*

This section makes provision for the registration of two classes of instruments; the one comprised of deeds of land sold for arrears of taxes; the other embodying deeds of land sold under process issuing from the several Courts of Law and Equity. Purchasers under the former class must, in order to preserve their priority, effect a registration within eighteen months from the date of the sale by the Treasurer or other officer; while those claiming under the latter class are allowed but six months after date of sale for that purpose. As it will be more convenient to consider the instruments mentioned in this section in the order referred to therein, the subject of deeds for land sold for arrears of taxes will first claim our attention.

The authority to sell lands for arrears of taxes was originally conferred by the Act 6. Geo. IV., cap. 7, by which Act the Clerk of the Peace in each district was required, upon receiving returns, from the several Treasurers of lands chargeable with arrears of taxes in such district, to issue a writ directed to the Sheriff of the district, requiring him to levy the amount of arrears together

(1) *Stephens v. Simpson*, 12 Gr., 443; 15 Gr., 594; see *Rykert v. Miller*, 14 Gr., 25.

(2) *Dart V. & P.*, 5 Ed., 311.

with his fees. The lands were to be advertised by the Sheriff, and sold at public auction after the expiry of six months from the delivery of the writ to him. Upon payment of the purchase money the Sheriff was to give a certificate of such sale to the purchaser, who was then permitted to enter into possession. The owner could, however, redeem within one year from date of sale, upon paying the taxes, interest and expenses. Upon his failure to redeem, the Sheriff for the time being, was obliged, upon the demand of the purchaser, his heirs or assigns, to execute a conveyance of the lands in fee simple to him or them. Before the Sheriff delivered such conveyance he was required to deliver to the Registrar of the County, wherein the lands were situate, a certificate of such sale, under the hand and seal of office, in which was to appear the name of the purchaser, the sum paid, the number of acres sold, the number or designation of the lot of which such lands formed a portion and the date of the conveyance. This certificate could comprise a schedule of any number of conveyances, and was of itself declared to be a sufficient authority to the Registrar, in lieu of a memorial, upon which to register the conveyance or conveyances referred to therein. The Registrar was authorized, upon receiving such certificate, and upon the production of any conveyance mentioned therein duly executed by the Sheriff, to enter upon the Registry a transcript of such conveyance; the entry being deemed a sufficient registration. No provision was made by that Act for the registration of the certificate itself. It was not required to be entered in any book, and merely served the purpose of a check, or index, of such Sheriff's deeds as might be

brought to him for registry. The certificate could be given by the Sheriff who had sold the land and executed the conveyance, notwithstanding that at the date when the certificate was given he might be out of office (1). The Act did not render registration of such deeds for taxes compulsory, nor did it require registration where the title to the lands previous to the sale was an unregistered one; purchasers under such deeds being placed upon the same footing, in this respect, as grantees under any other kind of conveyance.

In an action of ejectment the plaintiff claimed under a tax sale made in 1839. The Sheriff's deed therefor was executed 10th July 1840, but was not registered until 18th July 1861. The defendant claimed under the heir at law of the patentee by deed, dated 10th May 1855, and registered 5th July 1855, being the first deed registered upon the land. The defendant claimed priority by reason of prior registration; but it was held,—Wilson J. *dissentiente*,—and subsequently affirmed on appeal, that the title, being an unregistered one at the time the Sheriff's deed was executed, did not require registration to preserve priority (2). It is to be remembered, in connection with the case just cited, that by the Act 13-14, Vic., cap. 63, which came into effect 1st January 1851, the distinction between registered and unregistered titles had been abolished, and registration was no longer optional. As that Act had, however, no retrospective effect (3), it could not assist the defendant in that case.

(1) Jones v. Cowden, 34 U. C. R., 345; aff'd on appeal, 36 U. C. R., 495.

(2) *Ib.*; see page 207 *ante*.

(3) Campbell v. Campbell, 6 Gr., 600.

Repealed
by 13-14
Vic., c. 66.

The Act, 6, Geo. IV., cap. 7, was repealed by the Act 13-14, Vic., cap. 66, which contained a clause to the effect that such repeal should not affect any taxes which had accrued and were actually due at the time the repealing Act came into force, or any remedy for the enforcement or recovery thereof.

Effect of
repealing
clause.

It was held that this exception did not continue the power of the Sheriff to convey lands sold prior to such repeal, and therefore that nothing passed by a deed executed by a Sheriff in 1862 of lands sold by him in 1830, for arrears of taxes (1).

Many of the provisions of the Act 6, Geo. IV., cap. 7, were re-enacted by the Act 13-14, Vic., cap. 67, which required the Sheriff or High Bailiff, upon selling lands for arrears of taxes, to give to the purchaser a certificate of such sale, stating in such certificate that at the expiry of three years from the date thereof, a conveyance would be executed by the Sheriff or High Bailiff upon demand, provided the lands were not redeemed in the meantime. Upon non-redemption, the purchaser obtained his deed, and was further entitled to receive from the Sheriff or High Bailiff a certificate of such deed being executed and containing the same particulars as those mentioned therein. This certificate answered the purpose of a memorial, and, upon production to the Registrar of the certificate and the deed, the latter could be registered.

Defect in
Act 13-14
Vic., c. 66.

The omission in the Act 13-14, Vic., cap. 66, repealing the Act 6, Geo. IV., cap. 7, to provide for the registration of Sheriff's deeds for lands sold for taxes under the repealed Act created much inconvenience, as such deeds could not be regis-

(1) *Bryant et al., v. Hill*, 23 U. C. R., 96; followed in *Cotter v. Sutherland*; *Stevens et al v. Jacques et al*, 18 U. C. P., 357.

tered upon the certificates referred to in the Act 13-14, Vic., cap. 66. This defect was not remedied until by the Act 16, Vic., cap. 182, sec. 66, it was provided that, notwithstanding the repeal of the Act 6, Geo. IV., cap. 7, Registrars were empowered to register deeds for lands sold under that Act according to provisions.

The Act 13-14, Vic., cap. 67, was repealed by ^{16 Vic., c. 182.} the Act 16, Vic., cap. 182, which, however, excepted from the effect of such repeal any rates or taxes accrued at the time the latter Act came into force. Following the ruling in *Bryant v. Hill*, it was held that this exception in the repealing clause conferred no power to complete inchoate proceedings instituted under the repealed Act, and that the Sheriff was disabled from executing a conveyance of lands sold by him prior to the passing of the Act 16, Vic., cap. 182 (1).

Upon the consolidation of the several Assess-Consolidation of
ment and Registry Acts in 1859, the necessary Assess-
proof for the registration of Sheriff's deeds of lands ment Acts
sold for taxes, whether the sales were effected prior in 1859.
to 1st January, 1851, or subsequent thereto, was placed upon one footing (2).

The policy of the Registry Act of 1865 being to make registration incumbent upon all parties, it was but proper that deeds of lands sold for taxes should be included in its provisions.

The authority of the Sheriff, who made the sale Sheriff's
to execute such deeds, could be exercised by his successor
successor in office under the Act 27-28, Vic., cap. 28, sec. 43 (3). empowered
ed were
ante-
cedent.

Where a sale and deed are made by a person out Sales
made by

(1) *McDonald v. McDonnell et al*, 24 U. C. R., 424.

(2) C. S. U. C., cap. 55, secs. 151-2; C. S. U. C., cap. 89, s. 35.

(3) *Bell v. McLean*, 18 U. C. P., 416; see Rev. Stat. cap. 16, s. s. 43-48.

parties
out of
office.

Treasurer
substitut-
ed for
Sheriff by
Assess-
ment Act
of 1869.

of office, they are *prima facie* unauthorized, and it lies upon a party relying thereon to prove such proceedings by such person when in office, as might be deemed an inception (1). It has been questioned whether the law as to inception of execution or process applies equally in the case of tax sales as in cases of sales of land under execution (2). Under the Assessment Act of 1868 (3) the power of the Sheriff to sell lands for arrears of taxes, and to execute conveyances thereof, was taken away, the County Treasurer being required to conduct the sale, and, in conjunction with the Warden, to execute conveyances to purchasers. The Treasurer is now (4) required to grant to the purchaser a certificate of the property sold; containing the particulars required by the statute, under which certificate the purchaser becomes the owner, for the purpose of protecting the property sold from spoliation. Upon failure of redemption after the expiry of the period for redemption, the deed is to be executed in favour of the purchaser. The mode of registering deeds of lands sold for taxes varies somewhat. If the land has been sold for taxes prior to January 1st, 1851, the deed is to be registered on production thereof, accompanied by a certificate (5) of the sale to the purchaser under the hand and seal of office of the Sheriff, stating the name of the purchaser, the amount paid, the number of acres, and the estate or interest sold, the lot or tract of which the same forms part and the date of the Sheriff's conveyance to the purchaser; the certificate is to be filed by

(1) *McMillan v. McDonald*, 26 U. C. R., 454.

(2) *Ib.*

(3) 32 Vic., cap. 36.

(4) Rev. Stat. (Ont.), cap. 180, s. 140 *et seq.*

(5) See form in Appendix A.

the Registrar and a transcript of the conveyance entered by him in the proper registry books (1). Where the lands were sold between January 1st, 1851, and January 1st, 1866, the Sheriff must give the purchaser a certificate containing similar particulars, which certificate, for the purpose of registration of the deed, is to be deemed a memorial thereof. On production of the deed and this certificate the deed is to be registered without further proof (2). Where the land have been sold since 1st January, 1865, the deed being executed in duplicate under the seal of the municipality and the signature of the Treasurer and Warden is to be registered upon the mere production of the deed in duplicate without more (3).

For forms of Sheriff's and Treasurer's deeds see Appendix A.

A Sheriff's deed of land sold for taxes under the Act 6, Geo. IV., cap. 7, was held to prevail against a patent subsequently issued to the original nominee (4). Such a deed binds the estate of every one claiming under the title of the original nominee of the Crown, whether by descent or otherwise (5).

The words "Treasurer" and "other officer" include the occupants of such offices at the date of the execution of the deed (6).

The deed can be executed by the Sheriff in favor of the assignee of the highest bidder (7).

(1) Rev. Stat. (Ont.), cap. 180, s. 152.

(2) *Ib.*, s. 153.

(3) *Ib.*, s. 148 *et seq.*

(4) Charles v. Dulinage, 14 U. C. R., 585.

(5) Ryckman v. Van Voltenburg *et al.*, 6 U. C. P., 385.

(6) Rev. Stat. (Ont.), cap. 180, s. 149; see Ferguson v. Freeman, 27 Gr., 211.

(7) Doe d. Bell v. Reaumore *et al.*, 3 O. S., 243; Doe d. Bell v. Orr, 5 O. S., 433.

Sheriff's
sale before
issue of
patent.

Interpre-
tation of
word
"Treas-
urer," &c.

Taxes
must be
"in ar-
rears."

It is essential that the taxes should be "in arrears." Apart from the exclusive application of this section to deeds of lands sold for "arrears" of taxes, it is clear that a deed, purporting to be made in pursuance of a sale for taxes, where in fact no "arrears" existed at the time of the sale, is utterly void, and is not cured by the one hundred and fifty-fifth section of the Act 32, Vic., cap. 36 (1).

The object of this section is to compel a purchaser to register his deed; his omitting to register the tax deed within the prescribed period will render it void as against a purchaser in good faith who first registers. If the purchaser under a tax sale neglects to register his deed within the eighteen months from the date of sale, he will lose the priority which he otherwise would have under this section against a purchaser or mortgagor from the owner, who, without notice of such sale, duly registers his conveyance before the tax deed is registered (2). This section applies as well between several purchasers at successive sales for taxes, as between a purchaser thereat and the vendee of the owner (3). A purchaser at a tax sale, who enters into possession, and improves the property, but neglecting to register within the proper time, is postponed to a *bona fide* purchaser, from the owner, may nevertheless be entitled to be paid for his improvements under the 159th section of the Assessment Act (4).

A sale and conveyance for taxes cuts out the

(1) *Hamilton v. Eggleton*, 22 U. C. P., 536; *Proudfoot v. Austin*, 21 Gr., 566; *Wapels v. Ball*, 29 U. C. P., 403; see *Howe et ux. v. Thompson*, M. T., 6 Vic.; *Myers v. Brown*, 17 U. C. P., 307; *McKay v. Chrysler*, 3 Sup. Ct. R., 436.

(2) *Smith v. McLandress*, 26 Gr., 17.

(3) *Aston v. Innis*, 26 Gr., 42.

(4) *Ib.*, see *Churcher et al. v. Bates et al.*, 42 U. C. R., 466.

dower of the owner thereof in the part sold and conveyed (1.) For fuller information of the essential requisites to the validity of tax sales, the reader is referred to Mr. Taylor's excellent treatise upon 'Titles (2).

Deeds of land sold under process at law or equity will next be briefly referred to. By the Imperial Act 5, Geo. II., c. 7, it was enacted that real estate lying within the British American plantations should be chargeable with the debts, duties and demands of the owner thereof, and should be assets for the satisfaction of such debts in like manner as real estate was liable by the laws of England at the time that statute was passed; and should be made subject to the like remedies, proceedings and process in any Court of Law or Equity in such plantations for the seizure in extension, sale or disposal thereof in the same way that personal estates were seized, sold and disposed of for the satisfaction of debts. Upon this statute is based the practice of seizing and selling lands in this Province under legal or equitable process (3).

Until a comparatively late date writs against lands could not be issued, unless a writ of execution against the goods and chattels of the execution debtor had previously been issued and returned *nulla bona* (4); but, this operating injuriously to the rights of creditors, it was provided by the Act 31 Vic., cap. 25, that writs against lands could be issued simultaneously with writs against goods, and placed at the same time in the Sheriff's hands, in order that the lands might become bound from the time of such delivery.

(1) Tomlinson v. Hill, 5 Gr., 231.

(2) p. 91 *et seq.*

(3) Gardiner v. Gardiner, 2 O. S., 520.

(4) 43 Geo. III., cap. 1. ss. 1-2.

Deeds
under pro-
cess.

Prior to
31 Vic.,
c. 25, writs
against
lands
could not
issue be-
fore writs
against
goods re-
turned
*nulla
bona.*

The lands, however, cannot be sold until after the expiry of twelve months from the date of delivery, nor until the writs against the goods and chattels are returned *nulla bona* in whole or in part.

Lands
bound
from de-
livery of
writ to
Sheriff.

Lands are bound as against the purchaser from the execution debtor from the time the writ is delivered to the Sheriff; such a writ being, in this respect, placed upon the same footing as a writ against goods (1).

What the
writ binds.

The writ binds not only the lands of the debtor which he possesses at the time of the delivery of the writ, but also such as he may afterwards acquire during its currency. Where lands were conveyed to a purchaser, against whom judgments were registered, and executions against his lands were in the Sheriff's hands at the time of the execution of the conveyance to him, it was held, that the judgments and executions attached upon the land so conveyed; and had priority over a mortgage, which had been executed by the purchaser to the vendor, to secure a balance of the purchase money, upon the same day that the conveyance was executed (2).

Has not
priority
over mort-
gage upon
after ac-
quired
lands
given to
secure
part pur-
chase
money.

It is quite clear, however, that the doctrine of writs against lands affecting after-acquired lands does not apply in cases where the execution debtor, at the time of purchasing such after acquired lands, gives a mortgage for the security of the purchase money therefor. Such is the rule in the State of New York and many other of the United States (3). If it were otherwise, transactions in the transfer of real estate would be attended with great danger, and receive a severe check. The

(1) Doe d. Auldjo v. Hollister, 5 O. S., 739.

(2) Rutan v. Levisconte, 16 U. C. R., 495.

(3) See 4 Kent's Comm., 435; Jones on Mortgages, s. 464.

case of *Ruttan v. Levisconte* appears to have been decided upon the ground, that by the execution of the conveyance to the execution debtor, the latter obtained the legal estate; and, although this was but for a moment, that it was sufficient for the purpose of enabling the judgments and executions against him at the time to attach against the land to the prejudice of the mortgage. Little stress, however, appears to have been laid upon this point, as it was considered to be a mere technical one and, to be met or averted without difficulty by resorting to the vendor's lien. Burns J. after stating the question "whether lands purchased by the judgment debtor, during the currency of a writ against his lands, but for which lands, instead of paying the purchase money in full, he executes a mortgage thereon some hours after he has received the conveyance to himself in fee, are liable to the writs of execution in the hands of the Sheriff at the time of purchase," says, "I think, by the plaintiff executing a conveyance transferring the legal title to the judgment debtor, he subjected the property to the legal effect of the executions in the Sheriff's hands, and I do not think he acquired back the legal title by means of the mortgage shortly after executed to him, so that it would exclude the writs attaching in the meantime. This, however, is merely in a *legal point of view*, and there really is very little use as it appears to me, in our being asked to consider a question in this Court, which can be of no practical use to the parties, for, without doubt, the plaintiff would have a good remedy in equity to charge the estate by way of lien for the remainder of the unpaid purchase money to the exclusion of the judgment creditor."

Although it has been held that the widow of a vendee, who, immediately mortgaged back to the vendor to secure the payment of the purchase money, was entitled to dower as against the mortgagee (1), yet the judgment in *Potts v. Meyers* was not unanimous, and it was admitted that the doctrine enunciated savoured of injustice, attention being drawn to the fact that in many of the American Courts it had been held that in such a case the wife would have no dower. The case of *Ruttan v. Levisconte* rested upon the decision in *Potts v. Meyers*, the authority of which has been virtually over-ruled by a late case, which decides that the widow of a mortgagor, who had given several mortgages upon his lands, some of the mortgages being given to secure unpaid purchase money, and others to secure payment of money borrowed, is entitled to dower upon the sale of the lands under a decree out of the amount realized, deducting however therefrom the amount of the mortgages given to secure the unpaid purchase money (2). It may also be observed that as an execution creditor is not a purchaser within the meaning of the Registry Act, he clearly has no equity against the mortgage given to the vendor to secure balance of purchase money (3).

Potts v. Meyers
overruled.

Sheriff
bound to
enquire
after lands
of debtor.

It is expected that the execution creditor should point out to the Sheriff the lands of the debtor, but his failure to do so will not excuse the Sheriff from responsibility, if by reasonable enquiries he could have ascertained the fact; and notice to the Deputy Sheriff of such lands is equivalent to notice

(1) *Potts v. Meyers*, 14 U. C. R., 499, Robinson C. J. *dissentiente*; *Lynch v. O'Hara*, 6 U. C. P., 259.

(2) *Re Hopkins*, *Barnes v. Hopkins*, 16 U. C. L. J., (N. S.), 55.

(3) See remarks of Spragge V. C., *Montreal Bank v. Baker*, 9 Gr., at p. 107.

to the Sheriff (1). A Sheriff's deed, being but a completion of the sale, is only good for lands actually sold; and a person is not estopped from showing by parol that lands purporting to be thereby conveyed were not sold. If it cannot be ascertained from the deed what was and what was not sold, the deed is bad (2).

A Sheriff's sale under an execution being within the Statute of Frauds should be evidenced by a conveyance, as required by that statute (3), and must be under the hand and seal of the Sheriff. The statute imposes upon the Sheriff the duty of selling, but the necessity for conveyance arises from the general law regulating the transfer of real estate; and the provisions of Registry Act are as applicable to such conveyances as to any other description of deed (4). The deed should be executed by the Sheriff, and be under his seal of office. Sheriff's sale is within 29 Car. II., c. 3.

A deed, executed by a Deputy Sheriff, for lands sold under an execution, after the death of the Sheriff to whom the deed was directed, and after the appointment of a new Sheriff, is void (5). It was formerly held that a sale made, and conveyance executed, by a Sheriff while out of office at the date of the sale and conveyance was valid, provided that while in office he had acted upon the writ to an extent amounting in law and fact to an inception in the execution of it, and had duly fol-

By whom deed executed.

(1) *Hutchings et al. v. Ruttan*, 6 U. C. P., 452; *McDonald v. Cameron*, 13 Gr., 84; see *Fitzgibbon v. Duggan*, 11 Gr., 188.

(2) *Doe d. Miller v. Tiffany*, 5 U. C. R., 79.

(3) *Doe d. Tiffany v. Miller*, 10, U. C. R., 81 per *Burns J.*; *Witham v. Smith* 5 Gr., 203; *Doe d. Moffat v. Hall, Tay.*, 510; *Mingaye v. Corbett*, 14 U. C. P., 557; *Doe d. Hughes v. Jones*, 9 M. & W., 372.

(4) *Doe d. Brennan v. O'Neil*, 4 U. C. R., 8; *Bruyere v. Knox*, 8 U. C. P., 520; *Waters v. Shade*, 2 Gr., 427; see *Doe d. Hughes v. Jones supra per Alderson B.*, p. 377.

(5) *Doe d. Campbell v. Hamilton*, 6 O. S., 88.

lowed up such steps after leaving the office (1). What amounted to an inception was at one time not clearly defined. By the two hundred and sixty-eighth section of the Can. Stat. U. C., cap. 22, it was provided that an advertisement in the *Official Gazette* should be a sufficient inception. By the two hundred and sixty-ninth section (2) it was provided, that, upon a Sheriff retiring from office before sale had under a writ, the sale and conveyance relating thereto should be made by the incoming Sheriff, and not by the retiring Sheriff; but the latter was empowered to complete any sale made by him while in office. This authority to the outgoing Sheriff was taken away by the Act 27-28, Vic., cap. 28, sec. 43 (3).

Requisites
to validity
of a Sher-
iff's deed
under exe-
cution.

Priority
over deed
from
debtor.

The principal requisites to the validity of a Sheriff's deed are: (a) the judgment should be duly entered, (b) the writ should be good on the face of it, and (c) the proceedings upon the writ should appear to have been taken during its currency. It was at one time held under the Irish Registry Act that the Sheriff, being an assignee in law, could not make a subsequent title after a *bona fide* conveyance for value had been executed by the execution debtor (4); but this decision was over-ruled in the House of Lords, who decided that an assignment in law would, if registered, acquire priority over a conveyance from the execution debtor, if registered subsequent to such assignment (5).

A.'s land was sold under an execution in 1843,

(1) *Doe d. Miller v. Tiffany*, 5 U. C. R., 79; see *Hazlitt v. Hall*, 24 U. C. R., 484; *Bradburn, v. Hall*, 16 Gr. 518; see *Douglass v. Bradford*, 3 U. C. P., 459.

(2) See *Rev. Stat. (Ont.)*, cap. 66, sec. 43.

(3) *Rev. Stat. (Ont.)*, cap. 16, sec. 48.

(4) *Fury v. Smith*, 1 *Hud & Bro.*, 735.

(5) *Warburton v. Loveland*, 2 *Dow & Cl.*, 480.

but the Sheriff's deed to the purchaser was not executed until 1853. In 1852, A. conveyed to C., who conveyed to plaintiff. The last two deeds were registered, but that from the Sheriff was not. It was held, that notwithstanding the seizure and sale, the lands remained in A. until assigned by the Sheriff's deed, it was nevertheless well established that the Sheriff's deed had relation back to the time of sale, without regard to the interval of many years between the two; and that, therefore, the prior registry of the plaintiff's title would not defeat the Sheriff's deed (1). Had the Sheriff's deed been executed prior to the deeds from A. to C. and from C. to the plaintiff, it is clear that the plaintiff would have gained priority. Where the purchaser from the Sheriff neglects to register, and subsequent to such conveyance by the Sheriff, the execution debtor conveys to a third person who registers before the Sheriff's vendee, the latter will be postponed, provided such third person has given value without notice (2). The prior registration of a Sheriff's deed gives the Sheriff's vendee priority over an antecedent, but unregistered, deed from the execution debtor, to the same extent that the prior registration of a deed from the party himself would do (3). A purchaser for value, under a Sheriff's sale of A.'s interest in land, is entitled under the Registry Acts to prevail against a non-registered conveyance made by A. prior to the Sheriff's sale (4). A mortgage by the devisees of an execution debtor, executed subsequent to a

As against assignee of the de-

(1) *Burnham v. Daly*, 11 U. C. R., 211.(2) *Bruyere v. Knox*, 8 U. C. P., 520 per Draper C. J.(3) *Doe d. Brennan v. O'Neill*, 4 U. C. R., 8; *Waters v. Shade*, 2 Gr., 457.(4) *Bruyere v. Knox*, *supra*.

visce of
debtor.

writ against the testator's lands in his executors hands being delivered to the Sheriff, was held void, and as interfering with the power of the Sheriff to sell; upon the ground that property subject to the writ at the time of its delivery to the Sheriff, cannot be withdrawn from its operation by the aid of the debtor's devisees or other representatives (1). But a purchaser at Sheriff's sale of lands, sold under an execution against the devisee, takes in preference to a purchaser under a subsequent execution, though prior judgment, against the executor of the testator (2); and a *bona fide* purchaser for value from the heir or devisee will hold priority, as against a subsequent judgment and execution founded upon a single contract debt of the ancestor; but not if the vendee had notice (3), or did not give value (4).

Eject-
ment can-
not be
brought
before ex-
ecution of
Sheriff's
deed.

Although the Sheriff's deed relates back to the day of sale, for the purpose of defeating intervening conveyances, the vendor is nevertheless unable to bring ejectment until its execution (5). A Sheriff's deed is not to be considered as a mere release in the strict sense of the term (6). It is *prima facie* evidence of the delivery of the writ to the Sheriff and of the seizure and sale thereunder (7); and the title of the purchaser is not liable to be defeated by irregularities in proceedings anterior to the judgment (8).

Sheriff
compella-

The Court of Chancery will entertain a bill

- (1) Johnston v. Sowden, 19 Gr., 224.
- (2) Doe d. Auldjo v. Hollister, 5 O. S., 739.
- (3) Reid v. Miller, 24 U. C. R., 610.
- (4) Peck v. Bucke, 2 Chy. Cham., 294.
- (5) Doe d. Proudfoot v. McRae, 6 O. S., 502.
- (6) Gaviller v. Beaton, 12 U. C. P., 519.
- (7) Doe d. Dissett v. McLeod, 3 U. C. R., 297.
- (8) Doe d. Spafford v. Brown, 3 O. S., 90.
- (9) Doe d. Boulton v. Ferguson, 5 U. C. R., 515; Mitchell v. Greenwood, 3 U. C. P., 465.

against a Sheriff, to compel him to execute a conveyance of property sold by him under an execution, to which bill the execution debtor should be made a party (1); and will also in case of misconduct or fraud, of the Sheriff, set aside a sale and conveyance by him (2). The Courts of Common Law have also summary control over the Sheriff, as an officer of these Courts (3). Where good cause is shown, the Court will, after a sale of lands under execution, prevent an assignment by the Sheriff to the purchaser (4).

Prior to the passing of the Registry Act of 1865, no limitation existed, within which a Sheriff's deed was required to be registered; such a deed, though unregistered, could not be defeated by any subsequent conveyance made by the party whose land had been sold by the Sheriff (5).

A sale by a Sheriff, under an execution against the husband, does not affect the wife's right to dower (6).

A mortgage by the husband and wife of the wife's lands having been registered without any acknowledgment by the wife of her willingness to part with her estate, as required by statute, and the Sheriff having, after such mortgage and registration thereof, sold and conveyed the husband's interest in the land under a *fi-fa*, the deed to the purchaser was registered after the re-execution of the mortgage and the due acknowledgment by the wife. The mortgage, however, was not re-registered after such re-execution and acknow-

(1) *Witham v. Smith*, 5 Gr., 203.

(2) *McGill v. McGlashan*, 6 Gr., 324.

(3) In *re Campbell, et al.*, 10 U. C. R., 641; see *Bethune v. Corbett*, 18 U. C. R., 498.

(4) *Bank of Upper Canada v. Miller*, H. T., 3, Vic.

(5) See *Burnham v. Daly*, 11 U. C. R., 211.

(6) *Draper on Dower* 45; *Walker v. Powers*, M. T., 4 Vic.

ledgment. It was held that the interest of the husband in the land passed to the purchaser under the Sheriff's deed, to the exclusion of the mortgagee (1).

Wills issuing from Court of Chancery.

Under the Execution Act (2) decrees and orders of the Court of Chancery and orders and rules of the Superior and County Courts for the payment of money, costs, charges or expenses are enforceable by Writs of *Fieri Facias* and *Venditioni Exponas*, to be issued at the instance of the person entitled to receive payment; and the proceedings upon such writs are similar to those in other cases.

Writ of sequestration.

Lands, however, cannot be sold under a writ of sequestration (3). A mortgagee paying off a prior execution has a lien therefor on the lands, as against a subsequent execution creditor (4).

Sales for taxes before 4th March, 1868.

77. Where deeds for land sold for taxes, or under process of law, before the fourth day of March, one thousand eight hundred and sixty-eight, have not been registered within one year after the said day, the parties respectively claiming under any such sales shall not be deemed to have preserved their priority as against a purchaser in good faith who has acquired priority of registration. 31 V., c. 20, s. 59.

Operation of section.

Section seventy-six *ante* applies to deeds for lands sold for taxes or under process of law subsequent to the fourth day of March, 1868; deeds of this class relating to lands sold prior to that date are provided for by this section, which requires their registration on or before the fourth day of March, 1869, in order to retain priority. As has already been remarked in connection with the preceding section, registration of Sheriff's deeds, either for taxes or under process, was not compulsory prior to the Registry Act of 1865. By the fifty-seventh section of that statute it was provided,

(1) *Moffatt v. Green*, 4 U. C. P., 402.

(2) *Rev. Stat. (Ont.)*, cap. 66, sec. 72.

(3) *Nelson v. Nelson*, 6 P. R., 194, *Myers v. Myers*, 21 Gr. 214.

(4) *Trust & Loan Co. v. Cuthbert*, 14 Gr., 410.

that all deeds for lands sold for taxes, under process of law, prior to the passing of that Act (1), should be registered within one year from that date, otherwise parties claiming under such sales should not be deemed to have preserved their priority as against a purchaser in good faith who might have acquired priority of registration. When the Registry Act of 1868 was enacted, it was provided by the fifty-ninth section of that Act, (of which the present section is a re-enactment), that deeds for land sold for taxes or under process of law, prior to the fourth day of March 1868, (the date when that statute was passed), should be registered within one year thereafter to preserve such priority. The effect of the fifty ninth section of the Registry Act of 1861 being retrospective, was to extend the period for the registration of the Sheriff's deeds for lands sold for taxes or under process prior to the eighteenth day of September 1865 to the fourth day of March 1869; so that a deed, though registered subsequent to the eighteenth day of September 1865, but prior to the fourth day of March 1869, would retain priority as against the persons mentioned in the fifty-seventh section of the Registry Act of 1865 and fifty-ninth section of the Registry Act of 1868, except as against such persons who had acquired rights under the former Act, prior to the passage of the latter.

This section is a declaration of the Legislature ^{Object} that all such deeds shall be registered; "and the ^{sought to} ^{be obtain} object and intention of the framers of the section ^{ed by it.} were, that if such deeds were not registered at the time of the passing of the Act, they should be registered within one year thereafter; otherwise

(1) 18th September, 1865.

parties claiming title under such deeds should lose their priority of title, as against a purchaser in good faith, that is, one who purchases in ignorance of the tax title of the Sheriff's vendee" (1).

Omission to register under this section does not invalidate if subsequent party has notice. As actual notice displaces registration, it is clear, that if the purchaser who acquires priority of registration is aware of the existence of the Sheriff's or Treasurer's deed, he will not be entitled to plead this or the preceding section in his favour, though such deed be unregistered (2); and it is essential, furthermore, that he should have given value (3).

The words in the section "shall not be deemed to have preserved their priority" necessarily imply a recognition that the parties claiming under such deeds have a priority, which might be lost or defeated, if unregistered at the time of the passing of the respective Registry Acts, and so remaining unregistered for a year thereafter.

It was held, that a Sheriff's deed having been registered before the Act of 1865 was passed, it was not necessary to re-register it under the fifty-ninth section of the Registry Act of 1868 (4).

Priority is that of title. The priority of the purchaser under such deeds means "priority of title;" the priority of the subsequent purchaser means priority of registration (5). "The Legislature were probably led to introduce this exceptional provision as regards Sheriff's deeds from the consideration, that they were out of, and collateral to, the ordinary chain of title, and that therefore it was not unreasonable to give registered purchasers protection against

(1) Per Morrison J., *Jones v. Cowden*, 34 U. C. R., p. 365.

(2) *Peck v. Bucke*, 2 Chy. Cham. R., 294; *Jones v. Cowden* *supra*.

(3) *Doe d. Proudfoot v. McKae*, 6 O. S., 502.

(4) Per Morrison J., *Jones v. Cowden*, 34 U. C. R., p. 365.

(5) S. C. per Richards C. J.

them to an extent which was not thought warranted as regarded grantees to whom the title could be traced, and where possession of the title deeds would be some notice to purchasers " (1).

"A purchaser in good faith" has reference to one who purchases in good faith, and registers his deed subsequent to the Act. " Good faith."

"The object and intention of the Legislature was to compel all parties for the future to register, if they wished to avoid being cut out by subsequent purchasers, and to render it unnecessary for such interested purchasers to look beyond the Registry; and they extended the provision of the law as to tax sales to past deeds, giving the parties interested a reasonable time to comply with its requirements, before they should be brought within its operation " (2).

A Sheriff sold the land in question for arrears of taxes to the plaintiff, on the ninth day of October, 1860, and gave a certificate of such sale to the latter. For some reason, not explained, the plaintiff did not obtain his deed until the seventeenth day of September, 1866, on which day he registered it being within a year from the passage of the Registry Act of 1865. There was no proof of any neglect or misconduct on his part in not procuring the deed sooner. It was held, that the delay in registering did not, under the fifty-first section of that Act, avoid the deed as against the purchaser of the land who had first registered: that the deed, not having been questioned within the time limited by the protecting statutes in force at that time (3), was within their operation; and

(1) S. C. 36 U. C. R., p. 502, per Strong J.

(2) *Ib.* per Burton J., p. 508.

(3) 29-30 Vic., cap. 53, sec. 156,

that the plaintiff, who had brought ejectment in 1870, was entitled to recover (1).

Registry
to be
notice.

78. The registration of any instrument under this Act, or any former Act, shall, in Equity and at Law, constitute notice of such instrument, to all persons claiming any interest in such lands, subsequent to such registration, notwithstanding any defect in the proof for registration, but nevertheless it shall continue to be the duty of every Registrar not to register any instrument, except on such proof as is required by this Act. 31 V., c. 20, s. 66; 36 V., c. 17, s. 4.

The Act
imputed
notice.

One of the principal objects aimed at by the Registry Act is to give information, and to impute notice thereof to every one desiring to ascertain whether there has been any prior conveyance or encumbrance of land described in any registered instrument; such registered instrument operating as notice thereof to all parties claiming any interest in the parcel of land subsequent to the registration, in as full and effectual a manner, as if such person had, in fact, received the most direct, positive and actual notice of the instrument itself.

Prior to
13-14 Vic.,
c. 63 reg-
istry was
not notice.

Prior to the enacting of 13-14 Vic., cap. 63 it was held, in analogy with the decisions under the several English Acts, that registration was not notice in this Province (2); and an answer, filed prior to that Act coming into force, pleading that the defendant was an innocent purchaser, was held to be a good defence, notwithstanding that the plaintiff's title was registered (3). Such a plea cannot now be set up as against a duly registered deed, whether the title conveyed thereby be legal or equitable in its nature (4). By the eighth section of the statute referred to it was provided, that the registry of any instrument under that act, or the Registry Act of 1846, affecting any lands, should, in Equity, constitute notice of such instru-

But since
that Act
registry is
notice in
Equity.

(1) *Carroll v. Burgess*, 40 U. C. R., 381.

(2) *Street v. Commercial Bank of Canada*, 1 Gr., 169.

(3) *Kay v. Wilson*, 24 Gr., 212.

(4) *Eyre v. Dolphin*, 2 Ball & B., 300.

ment to all persons claiming any interest in such lands subsequent to such registry. Under the Consolidated Statutes (U. C.), cap. 89 it was held, ^{As well before as since that Act.} that registration was notice, in Equity, of all instruments registered before, as well as since registration was made notice; and that registration of a mortgage of unpatented lands under 8 Vic., cap. 8, sec. 9, was notice to subsequent purchasers, whether the patent had, or had not, issued under a sion of the Heir and Devisee Commission (1), "While the act declares that registration shall be notice, it does not provide that notice of an unregistered conveyance shall not affect a registered conveyance or judgment; and we must take it that the legislature had knowledge of the doctrine of a Court of Equity on this head; and indeed they appear to have had it expressly under consideration, when they declared that registration should be notice (2)."

It was at one time thought that this section ^{Object of this section.} appeared to limit the power of a Court of Equity to grant relief, and not to transfer that power to a Court of Law; and its effect in conjunction with the eighty first section was held to be "not to limit the legal rights of parties claiming under subsequent registered deeds, but rather to confine the rights of a Court of Equity to grant relief to those cases, in which there was actual notice; and not merely such notice as ought to have put the party on enquiry" (3). It has, however, since been determined, that the effect of actual notice is not confined to a Court of Equity, but is available in a Court of Law; and that therefore a non-registered

(1) Vance v. Cummings, 13 Gr., 25.

(2) Bank of Montreal v. Baker, 9 Gr., p. 301 per Vankoughnet C.

(3) Bondy v. Fox, 29 U. C. R., 72 per Richards C. J.

deed is not defeated at law by a subsequent registered one, where, before such registration, the person claiming thereunder had actual notice of the prior conveyance; and the case of *Bondy v. Fox* was, as to this point, distinguished (1).

Registry
notice "at
law."

Principle
on which
registration
operates as
notice.

Although long contended for, registration was not expressly declared to operate as notice "at Law" until the statute 36 Vic., c. 17 was enacted.

The principle upon which registration operates as notice of the instrument registered, is based upon the ground that a person acquiring land should ascertain whether any incumbrance or adverse claim is registered against the land he proposes to acquire; and he is therefore presumed to have searched the Registry Office with this object (2). Negligence in searching the Registry is evidence of a failure of due diligence (3). This doctrine, however, has no application in the case where one parts with an interest in land (4).

Where
registry
held not
to be
notice.

It has been previously remarked that registration is not considered notice under the English and Irish Registry Acts; and it has therefore been decided, in cases arising under those statutes, that a person, making a partial search in the registry, will not be affected with notice of a deed registered in that part of the register to which his search has not extended (5). Registration is not notice under the Nova Scotian Registry Act (6). Under many American Registry Acts, registration is held to operate as notice (7).

(1) *Millar v. Smith*, 23 U. C. P., 47.

(2) *The Trust and Loan Co. v. Shaw*, 16 Gr., 446.

(3) *Hamilton v. Lyster*, 7 Ir. Eq. R., 560.

(4) *The Trust & Loan Co. v. Shaw*, 16 Gr., 446; see *Boucher v. Smith*, 9 Gr., 347.

(5) *Hodgson v. Dean*, 2 Sim. & S., 227.

(6) *Doe d. Hubbard v. Power*, 1 Allan, 271.

(7) 2 *Cruise Greenliff*, 445.

regis-
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The notice which is afforded by registration is "actual" in its character (1); and it is immaterial whether the person affected thereby searched the Registry Office or not (2). Where land, having been mortgaged by the owner, was appropriated by a Township Council for road purposes, and compensation therefor having been fixed by arbitration was paid over by the Council to a creditor of the mortgagor, by which creditor the amount had been attached; it was held, that the Council were bound to have had notice of the mortgage, in consequence of its registration; and that the mortgagee, in the exercise of his prior right, was entitled to recover the amount from the Corporation, with costs (3). S. S., the owner of certain land, agreed to convey the same to his son, T. S., on his paying certain moneys for S. S., and forthwith granting a life lease thereof to S. S. and his wife. The conveyance and lease were accordingly executed. The lease was duly registered; but the deed was not registered, and was proved to have been destroyed. Subsequently S. S. and T. S. joined in a mortgage of the land to the plaintiff, which was registered. The plaintiff, on enquiries made by him on finding the lease on record, obtained actual notice of the deed to T. S., but did not deem it of any importance, believing the transaction to have fallen through, in consequence, as he understood, of the wife's repudiation, during her husband's lifetime, of the lease, and the destruction of the deed. After the death of S. S. the wife asserted her right to the life lease, and held possession of the land; and on the plaintiff bringing ejectment,

The notice
is "actu-
al" in
character.

(1) Bell v. Walker, 20 Gr., 558.

(2) Dominion Savings Bk. S. v. Kittridge, 23 Gr., p. 635, per Blake V.-C.

(3) Dunlop v. Township of York, 16 Gr., 216.

she defended in such right. It was held that the plaintiff could not claim by reason of the non-registration of T. S.'s deed and the registration of the plaintiff's mortgage, because as he had actual notice of such prior deed, the Registry Act would not apply; but even if applicable, the plaintiff was bound by the prior registration of the life lease (1).

— a deed, duly executed and registered, lands with a water privilege were vested in a person for life, with remainder to his son in fee. The deed contained an agreement or stipulation that neither the father or son could dispose of or encumber the property, without the consent of the other. The father, with the knowledge, but without the consent, of the son, sold portions of the water frontage; and the purchaser, with the knowledge of the son, erected improvements thereon. After the father's death, the son sold the lands, including the whole of the water frontage to W. The vendee of the father filed a bill against the son and W., claiming absolutely that part of the water frontage which had been conveyed to him by the father; on the ground, that the son had acquiesced in such sale, and that W. had notice of the plaintiff's interest. It was held, that the registration of the deed, under which the father and the son claimed title, was actual notice to the plaintiff of the son's title; and that the acquiescence, or lying by, on the part of the son could not affect the latter's interest, but, at most, would only be construed into a consent by him to the sale by the father of the father's personal interest in the property; and *semble* that under the circumstances, even if registration were not actual notice, the acquiescence would not bind his reversionary interest; and that

(1) Britton v. Knight *et al.*, 29 U. C. P., 567.

assuming that the plaintiff had acquired an equitable interest, arising out of such acquiescence, he could not enforce it against W. without proving actual notice to him of such equitable interest (1). A married woman, while under twenty-one years of age, but representing herself to be of full age, conveyed land to a *bona fide* purchaser for value, who registered his conveyance. After attaining her majority, she and her husband executed a voluntary deed to a trustee for her. The trustee subsequently sold and conveyed the lands; his vendee, upon the same day, executing a mortgage back to the trustee. It was held, *inter alia*, that the registration of the first deed from the married woman to the purchaser for value, was actual notice to the defendants of the execution of such deed, and, that as they acquired that knowledge after such registration, they took subject to all the rights of the purchaser. The Court, therefore, ordered the estate to be vested in the representatives of the purchaser, and declared the subsequent conveyance to be void as against them (2).

The purchaser of standing timber, with the right to cut the same, is affected with notice of the conveyance of the land from the original owner, and a mortgage back from the vendee, from the registration of the conveyance and mortgage; standing timber being within the operation of the Registry Laws (3).

Two mortgages were successively taken and registered, which, through mere inadvertence, omitted a certain parcel of land, which it had been the intention to have included in both instruments.

(1) Bell v. Walker, 20 Gr., 558, followed in Grey v. Ball, 23 Gr., 390.

(2) Bennetto v. Holden, 21 Gr., 222.

(3) McLean v. Burton, 24 Gr., 134; see p. 16 *ante*.

Parcels
omitted
by mis-
take.

The assignee of the second mortgage, for value and without actual notice of the first mortgage, subsequently obtained a conveyance of the legal estate of the omitted parcel from the grantee of the original vendor, who was entitled to hold it for unpaid purchase money. It was held, that the assignee of such second mortgage was entitled, as against the first mortgagee, to hold the legal estate, until the second mortgage was satisfied (1). On a re-hearing, however, the decree was reversed (2).

The owner of two town lots, 25 and 26, sold a portion of lot 26 to one P., but, by mistake, the description in the deed was such as to pass the whole lot. He subsequently sold lot 25 and all that part of lot 26 not previously sold to P., to the plaintiff, and the deed thereof was duly registered. After the registration of this deed the defendant obtained a conveyance from P., the description of the land corresponding to that contained in the original deed to P. It was held, that the registration of the plaintiff's deed was notice to the defendant of the plaintiff's claim to that part of lot 26 not sold to P., and that the plaintiff was entitled to a re-conveyance thereof (3).

Registra-
tion of as-
signment
of mort-
gage is not
notice to
mort-
gagor.

It was always held that payments made by the mortgagor to the mortgagee, after the registration of the assignment of the mortgage, without notice of such assignment obtained otherwise than through the mere fact of the registration of the assignment, were valid and would be allowed as against the assignee (4); and a tender to such

(1) Merchants' Bank v. Morrison, 18 Gr. 382; see Reid v. Whitehead, 10 Gr. 446.

(2) Merchants' Bank v. Morrison, 19 Gr. 1

(3) Haynes v. Gillen, 21 Gr. 15.

(4) Gilleland v. Wadsworth, 23 Gr., 547; see Engerson v. Smith, 9 Gr., 16.

assignee, after bill filed, of the balance, deducting the payments so made to the mortgagee before notice of the assignment, together with costs, has been held sufficient to deprive the assignee of any claim to costs incurred subsequent to the tender (1). But this doctrine does not apply in favor of his grantee, and payments made by the grantee to the mortgagee, under such circumstances, will not operate as a discharge to the grantee to the extent of such payments; as the registration of the assignment will affect him with notice thereof, and the omission on his part to institute proper inquiries, when making his payments, will be taken to be constructive notice to him (2). In this case *Moss J.* was of opinion, moreover, that registration of an assignment of mortgage is not notice to the mortgagor, "because a mortgagor paying off his mortgage does not come within the class of cases to whom registration constitutes notice" (3). The lessee of a mortgagor, under a lease made by the latter subsequent to the registration of the mortgage, is bound by such registration (4); but he is not bound thereby if the lease was executed prior to the mortgage where the lease is within the exception of the act, or, if without the exception, is duly registered prior to the registration of the mortgage (5).

Registration of an instrument does not operate as notice thereof, except as against those claiming

Lessee of
mortgagor
bound by
prior reg-
istry of
mortgage.

Against
whom reg-
istration

(1) *Williams v. Sorell*, 4 Ves. 389; see *Cater v. Cooley*, 1 Cox 182; *Chandos v. Brownlow*, 2 Ridg., P.C., 428.

(2) *Gilleland et al v. Wadsworth et al*, 1 App. R. 82.

(3) *Ib.*, p. 91.

(4) *Keech v. Hall*, Doug. 21; see *Thunder v. Belch*, 3, East 450; *Evans v. Elliott*, 9 Ad. & El., 342; *Pope v. Briggs*, 9 B. & C. 254; *Doe v. Bucknell*, 8 Car. & P., 569.

(5) See notes to sec. 37 *ante*.

does not
operate as
notice.

Party hav-
ing title
must exe-
cute in-
strument

through or under the grantor (1); the purchaser or owner of land not being bound to take notice of a registered lien or encumbrance upon such land, created by any person, other than those through whom he is compelled to derive title (2). It is essential, furthermore, to render registration of an instrument effective as notice thereof, that the registered instrument should be executed by one having the title, or a clear right thereto (3); otherwise such registration will not even amount to constructive notice to the true owner, of the execution of such instrument; it will only be notice to subsequent purchasers under the person so assuming to execute as grantor (4). Registration of an instrument is notice only of such fraud as appears upon the face of the instrument; it is not notice of fraud connected with its execution (5). It has been said that "registration is notice of the instrument registered, for the purpose of giving effect to any equity accruing from it, but it can be notice of any given instrument only to those who are reasonably led by the nature of the transaction in which they are engaged, to examine the register with respect to it" (6). Although it is a general principle that every deed, under which one claims title, should be registered, otherwise a purchaser for value will not be affected with notice of such unregistered deed (7), this doctrine does not obtain where a registered instrument refers to the description of lands as contained in an unregistered deed;

(1) *Corbin v. Sullivan*, 47 Ind., 356.

(2) *Harper v. Bibb*, 34 Miss. R., 472; *Stuart v. Bruneau*, 3 L. C. R., 309.

(3) See *Doe d. Spafford v. Breckenridge*, 1 U. C. P., 492; *Waters v. Shade*, 2 Gr., 458.

(4) *Perry on Trusts*, § 211 and cases cited therein.

(5) *Godbold v. Lambert*, 8 Rich. Eq., 155.

(6) *Beucher v. Smith*, 9 Gr., p. 353 per Esten V. C.

(7) See p. 88 *ante*.

provided the former operates as a conveyance cap-^{Reid v. Whitehead.} able of passing the interest of the grantee of the unregistered deed in the land mentioned therein. In 1853 the property in question was mortgaged by certain Trustees to the Trust and Loan Company who assigned their mortgage to the defendant Whitehead. In 1855, P., the then owner, executed a second mortgage to Whitehead. In 1857, P. submortgaged to B., who, in the same year, assigned his mortgage to the defendants, the the Canada Life Assurance Company, P. joining in the assignment. The mortgage from P. to B. was not registered until 1859, although the assignment thereof was registered in 1857. In 1858, P. mortgaged to the plaintiff who registered his mortgage before the registration of the mortgage from P. to B., the assignment from B. to the Company of the mortgage from P. to B. recited that mortgage, and in describing the mortgaged premises referred to the mortgage for a more particular description. The memorial of the assignment described the lands in the same language as that contained in the assignment, but the description, as set out in the mortgage, was not imported into the memorial. Upon the plaintiff seeking to establish the priority of his mortgage over those held by the several defendants, Esten V. C. held that, as between the plaintiff and the defendant Whitehead, the latter retained priority over the former in respect to the mortgages executed in 1853 and 1855 against the registration of which the plaintiff had raised several technical objections, but that as between the plaintiff and the defendants, the Canada Life Assurance Company, the plaintiff was entitled to priority; the registration of the assignment being deemed inoperative, on the

ground that the memorial referred to lands described in a deed not registered. This ruling being sustained upon a re-hearing, the Company appealed on the following grounds, *inter alia*, that the plaintiff had actual notice of the mortgage from P. to B. when he took his mortgage from P., and that the memorial of the assignment was in compliance with the requirements of the Registry Acts, so far as the description of the lands therein was concerned. After a very full and exhaustive argument the Court of Error and Appeal reversed the ruling of the Court below, so far as it related to the assignment of the mortgage to the Company, by giving it priority over the plaintiff's mortgage; on the ground that the assignment was in itself a conveyance sufficient to pass the interest which B. took in the lands included in the mortgage, and that as it operated as a conveyance of said interest, it was capable of a valid registration through a memorial following its language (1). In this case Vankoughnet C. held, further, that the registration of the assignment was tantamount to the registration of the mortgage, on the ground that P. had assented to, and had become an executing party to, the assignment; had he, however, not so become a party, the registration of the assignment would not have amounted to a registration of the mortgage, on the authority of Doe. d. Honeycomb v. Waldron (2).

Registration of instruments requiring registry.

It is generally held in the United States Courts that, as the doctrine of notice caused by registration is of statutory parentage, it will not arise in the case of a voluntary registration of an instrument not required by law to be registered in order to affect

(1) Reid v. Whitehead, 10 Gr., 446.

(2) 2 Str., 1064; see p. 88 *ante*; Delesderniers v. Kingsley, 3 L. C. R., 84.

one with notice (1). A similar interpretation has been placed upon the English (2), and Nova Scotian Registry Acts (3), while the contrary has been determined under the Irish Registry Laws (4). In our own Courts it has been said that "parties cannot, by their voluntary act of registry, in cases to which the Act does not extend, draw to their acts the consequences provided by the Legislature for another state of things" (5).

Where a deed transferring real and personal estate is registered in a County Registry Office, such registration is not constructive notice of the transfer of the personal estate (6).

Instru-
ment must
be regis-
tered in
proper
office.

It may be stated, as a general proposition, that the requisites of the Act should be closely adhered to; otherwise any material or substantial non-compliance therewith may result in avoiding the registration (7). In a case affected by the Registry Act of 1846, it was decided that registration in accordance with the provisions of that statute was imperative; so that a deed registered upon a memorial, in which the addition of the witness to the deed was omitted, was held to be fraudulent and void as against a subsequent incumbrance (8). In like manner the omission in the memorial of the Christian name of the mortgagor's wife, who executed the mortgage for the purpose of barring

Require-
ments of
the Act
should be
followed.

(1) *Kerns v. Scrope*, 2 Watts, 75; 2 Washburn Real Prop. 1st Ed., 592.

(2) *Malcolm v. Charlesworth*, Keen, 63.

(3) *Cogswell v. Graham*, 1 Russ. & Chers. Sup. Ct. (N. S.), Rep. 30.

(4) *Talbot v. Gilmartin*, 3 Ir. Jur., O. S., 171.

(5) *Doe d. Kingston B. S. v. Rainsford*, 10 U. C. R., p. 242, per Burns J.; see *Doe d. Ellis v. Grubb*, 3 O. S. 611; *Doe d. Shibley v. Waldron*, 2 U. C. P., 188; *Doe d. Spafford v. Breakenridge*, 1 U. C. P., 492.

(6) *Pilcher v. Barrows*, 17 Pick., 361.

(7) *Reid v. Whitehead*, 10 Gr., p. 448, per Esten V. C.

(8) *Robson v. Waddell et al.*, 24 U. C. R., 574.

dower, was held to render the registration invalid (1).

Instru-
ments de-
fectively
executed,
&c.

The registration of an instrument, improperly authenticated or acknowledged, has been determined not to amount to notice of such instrument under the American Registry Act, (2).

As a deed, so defectively executed as not to pass the title, is nevertheless evidence of a contract to convey (3), it is apprehended that the registration of such deed will operate as notice of the contract.

Registra-
tion made
notice not-
withstand-
ing de-
fects.

Defective registration having, therefore, been held not to amount to notice (4), and much inconvenience resulting therefrom, the 66th section of the Registry Act of 1868, declaring that the registry of any instrument under that or any former Act, should, in Equity, constitute notice of such instrument, to all persons claiming any interest in such lands subsequent to such registry, was amended by the Act 36 Vic., c. 17, s. 4, by inserting therein after the word "equity" the words "or at law," and by adding to the section the following words, "notwithstanding any defect in the proof for registry." This section appears to operate both retrospectively and prospectively; but not in an equal degree. Its retrospective operation, however, appears to be expressly limited to those cases which are referred to in section 79 *post*, while its prospective effect is not restricted.

36 Vic.,
c. 17.

Section
not appli-
cable to

Registration is declared by this section to operate as notice of the registered instrument to "all

(1) *Boucher v. Smith*, 9 Gr., 347.

(2) *Kerns v. Serope*, 2 Watts, 75; *Cockey v. Milne*, 16 Ind., 200; see *Doe d. Lyons v. Slavin*, 3 Kerr, 258.

(3) *Davis v. Earl of Strathmore*, 16 Ves., 419-428; *Bishop on Contr.*, s. 585.

(4) *McDonald v. Rodger*, 9 Gr., 75; *Boucher v. Smith*, *supra*; *Reid v. Whitehead*, *supra*; *Essex v. Baugh*, 1 Y. & C., 620.

persons claiming any interest in such lands, subsequent to such registration." It has been decided that this declaration does not obtain in the case of consolidation of securities (1).

Although the section is remedial in its application, and is designed to allow the registration of an instrument (registered subsequent to March 29th, 1873,) to operate as notice thereof, notwithstanding that defects in the proof for registration may exist, it by no means authorizes the reception of such an instrument by the Registrar for registration. Were it otherwise, the requirements of the Act as to proof for registry, which are designed for the benefit of the public, (2) would soon be disregarded, and confusion and irregularities would be the inevitable result. The section simply provides that the legal effect of an instrument registered upon defective proof for registry shall not be impaired thereby. It does not relieve the Registrar from any duty imposed upon him by this Act. On the contrary, to avoid any misapprehension on this point, the Registrar is prohibited in express terms, from registering any instrument except upon the proof required by the Act. Should he, however, disobey this injunction by registering an instrument upon imperfect proof, the registration of such instrument will nevertheless operate as notice thereof; but the Registrar will, by such omission of duty, render himself liable in damages to any person sustaining loss thereby.

79. So far as by the last preceding section it is provided, that notwithstanding any defect in the proof for registration the registration of an instrument shall constitute notice thereof, the said section shall only apply retrospectively from the twenty-ninth day of March, one thousand eight hundred and seventy-three, as to matters and facts within the meaning of section forty-one of this Act. 36 V., c. 17, s. 5.

- (1) *Brower v. Can. Perm. B. Ass.*, 24 Gr., 509.
- (2) See p. 94 *ante*.

Defects
referred
to in sec.
41.

The defects referred to in section 41 (1) are such as the non-setting forth in full of the name, place of residence, addition, occupation or calling of the subscribing witness, or the improper or insufficient description thereof in the affidavit, or any clerical error or omission in the affidavit of a mere formal or technical character. If this section were to be read only in connection with the preceding section, the inference would be that, as to defects not enumerated in section 41, the preceding section would not have any retrospective effect so far as notice is concerned, being in this respect operative only to the extent mentioned in the present section. The 88th section *post*, however, would appear to supply this defect, as it declares that the registration of an instrument had before March 29th, 1873, shall be valid, notwithstanding *any defect* in the proof for registration. As to the effect of section 88 upon the present section, see remarks upon that section, *post*.

80. Priority of registration shall prevail, unless before such prior registration there has been actual notice of the prior instrument by the party claiming under the prior registration. 31 V., c. 20, s. 67.

Priority of
convey-
ances
under the
Registry
Act and at
Com. Law.

It has been already remarked that the policy of the Registry Act is to render the priority of registered assurances dependent upon the order in which they are registered; in this feature, differing from the rule at Common Law, which depends upon the order in which such instruments are executed. This policy is one which, if consistently acted upon, and if not beset in some instances with practical difficulties, will enable an intending purchaser or encumbrancer to ascertain with accuracy, ease and despatch the true state of

(1) See p. 103 *ante*.

the title to the property he proposes to acquire or charge. By searches in the Registry office for the desired information ; and, by prompt registration of his own conveyance or security, to amply ensure the protection of his interests. Under the Registry Act of 1795 it was held that a party claiming under a subsequent deed which was registered first, had priority over a prior unregistered instrument, although he had notice thereof (1).

As the intention of the Act is to afford protection to persons acquiring interest, in real estate, without notice, and not to shelter those whose consciences are affected by notice obtained *aliunde* (2), Courts of Equity have broken in upon the strict application of the doctrine of priority according to the order of registration, by treating notice of a prior unregistered instrument as binding upon a subsequent purchaser or encumbrancer having such notice, notwithstanding that such purchaser or encumbrancer may have registered first. Such interference rested upon the ground, that as the object of the Act was to guard and protect purchasers and encumbrancers from secret conveyances, notice of such secret conveyances otherwise acquired, served the purposes of the Act ; and that to permit a purchaser or encumbrancer, having notice of an unregistered or secret conveyance, to defeat such conveyance by means of a prior registration, would be equivalent to legalizing fraud, and to defeating the very objects of the Act (3). A person having notice of a prior unregistered instrument cannot avail himself of the

Registry Act shelters *bona fide* acquisitions of land.

Doctrine of priority broken in by Courts of Equity.

(1) Doe d. Pell v. Mitchener, Dra. 471.

(2) Lee v. Green, 20 Jur., 170.

(3) Chevall v. Nicholls, 2 Eq., p. 64 ; La Neve v. La Neve, 3 Atk., 951 ; Turnstall v. Trappes, 3 Sim., 286. Agra Bank v. Barry L. R., 7 E. & I App., 135.

Endorsation of equitable evidence of notice of Reg. Act of 1865.

Present section is extension of sec. 74.

"Prior instrument."

registry of a subsequent deed to defeat the former, as such registration would be a fraud (1). Although this was the practice of the Courts of Equity, no statutory endorsement of this doctrine was promulgated prior to the passing of the Registry Act of 1865; by the sixty-fifth section of which it was provided, that priority of registration should in all cases prevail, unless before such prior registration there should have been actual notice of the prior instrument by the party claiming under the prior registration. The sixty-seventh section of the Registry Act of 1868 was to the same effect, and is preserved in the section under consideration, with the exception that the words "in all cases" have been omitted.

This section may be regarded simply as a qualification of section seventy-four *ante*, which confers priority according to the order of registration in favor of purchasers or mortgagees for valuable consideration, without actual notice. It defines the notice which will displace priority of registration to consist of actual notice of the *prior instrument*, which is unregistered, on the part of the person claiming under such prior registration. The words "prior instrument" have reference to an instrument executed prior, in point of time, to that claiming priority of registration. Notice of an instrument executed subsequent to that which is registered, although actual notice of such subsequent instrument is acquired before the registry of the former instrument, would, of course, be inoperative to prevail over such registered instrument. The introduction of this and the corresponding sections of the Registry Acts of 1865 and

(1) *Eyre v. Dolphin*, 2 Ball & B., 302; *Sheldon v. Cox*, 2 Eden, 224; *Blades v. Blades*, 1 Eq. Ab., 358.

1868 was, as has been already remarked, to adopt as part of the Statute Law, the practice of the Courts of Equity, avoiding as fraudulent the registration of a subsequent instrument as against a prior unregistered instrument, where the party claiming under such subsequent instrument had notice of the prior one. A person purchasing land with actual notice of an unregistered deed is, under this section, bound by such deed according to its true purport and effect, unless his error arises from some cause, which, in law, excuses him; and, therefore, where the unregistered deed is of an unascertained part of the land, such purchaser takes, subject to whatever the deed conveyed. His erroneous supposition as to the extent of land conveyed thereby, or his ignorance of the names of parties interested thereunder, makes no difference (1).

The general rule in Equity as to the operation of notice is, as we have seen, that the notice, in order to be effective, must be given to the intending purchaser prior to the execution of the conveyance under which he claims, and prior to the payment of the purchase money; notice acquired afterwards not being of any avail. Through some error this doctrine, which was intended to have become incorporated in the statute, is extended by this section to a degree beyond the point which it is probable the framers of the Act designed it to be applicable. It is well settled that no priority attaches to a prior registered deed, where the party claiming thereunder has notice of a prior unregistered deed at the time of his purchase (2).

General
rule as to
notice be-
ing effec-
tive.

Intention
of Legisla-
ture to
adopt the
rule as
part of
statute
law.

(1) *Severn v. McLellan*, 19 Gr., 220.

(2) *Re Wright's Mortgage Trusts* L. R., 16 Eq., 350.

Language
of section
however,
enunci-
ates a
principles
not in-
tended by
Legisla-
ture.

In *Millar v. Smith* (1), Hagarty C. J. says, "I have no doubt that the Legislature, if their attention was called to it, would correct a very serious effect which this sixty-seventh section may have. The intention was evidently to protect an innocent purchaser who had not actual notice when he effected his purchase; but the section is worded so as to refer the notice to the time of registration instead of the time of purchasing or paying his money." In the same case Gwynne J. remarks, "By some mistake, either of the draughtsman, or of the corrector of the press, the language used, when we come to scrutinize it, if the clause is to have effect in a case arising literally within it, enunciates a principle so remote from everything just and equitable, that we could have no difficulty in saying, if we could judge of the intention of the Legislature, otherwise than by the language used, that the introduction of such a principle was never contemplated." This section, as it stands, although meant to be, is not in reality a doctrine of Equity, but the contrary. "To give literal effect to this clause would be to deprive a purchaser for valuable consideration *without any notice* whatever of the prior instrument before he got his deed and paid his purchase money, if actual notice of such prior instrument should be brought home to him in the interval between his getting his deed and putting it on registry, * * * I have come, however, to the conclusion that as we have no means of judging of the intention of the Legislature, otherwise than by the language used, we must give effect to the clause as it is expressed. No doubt the mistake has only to be pointed out

(1) 23 U. C. P., 47.

(2) *Ib.*, p. 57.

to the Legislature to be rectified." It has, however, been determined in a case arising subsequent to the passing of the Registry Act of 1865, that where a purchase was completed, conveyance executed, and purchase money was paid without notice of the plaintiff's claim, but before the defendant registered his deed a bill was filed by the plaintiff, and certificate of *lis pendens* registered, the defendant did not thereby lose his defence as purchaser for value without notice, registration before acquisition of notice being unnecessary (1).

It was held by Richards C. J., that the object of this section was to limit the power of a Court of Equity to grant relief and to transfer that power to a Court of Law (2). This view was dissented from in the case of *Millar v. Smith*, *supra*.

The notice of the prior instrument is required by this section to be "actual" (3), as constructive notice, independent of the express language of this section, is inoperative (4). Clear proof of such actual notice is necessary (5), the evidence on this point being required to be distinct and satisfactory in order to displace a prior registered instrument (6); in fact it should be so clear that the fact of inattention thereto would be tantamount to a fraud.

It has been already observed that possession *per se* is not notice to affect a registered title (7). It certainly does not amount to "actual notice of

(1) *Sanderson v. Burdett*, 16 Gr., 119; see *Essex v. Baugh*, 1 Y. & Col. (C.C.), 620; *Elsev v. Lutyens*, 8 Hare, 159. *Riddick v. Glennon*, 6 Ir. Jur., 39; see p. 244, *ante*.

(2) *Bondy v. Fox*, 29 U. C. R., at p. 72.

(3) *Roe v. Braden*, 24 Gr., 589.

(4) *Soden v. Stevens*, 1 Gr., 346; *Ferrass v. McDonald*, 5 Gr., 310.

(5) *Wyatt v. Barwell*, 19 Ves., 430, per Sir Wm. Grant.

(6) *Hollywood v. Waters*, 6 Gr., 329; *Nixon v. Hamilton*, 1 Ir. Eq. R., 56.

(7) See page 232 *ante*.

notice of a prior instrument." As Spragge V. C. remarked in *Grey v. Ball* (1), "It would be an anomaly, looking at the way equitable interests are dealt with by these Acts, to hold possession by the person having such interest *per se* notice against a registered title, when possession by a person having a 'prior instrument' would not be notice." It has been expressly held that possession is not sufficient "actual notice" under this section (2).

Actual notice of an unregistered assignment of unpatented lands has the same effect as like notice of an unregistered conveyance after patent issued. A purchaser from the Crown having assigned his contract for valuable consideration to a purchaser, who afterwards died without having registered his assignment, executed a second assignment of the same lands for a trifling sum to another person, who had actual notice of the first sale at the time of his purchase. Having registered his assignment, and, upon application, obtained the patent, it was held that in consequence of such notice the second assignee took subject to the rights of the heirs-at-law of the first assignee (3). A purchaser or mortgagee is not required to make enquiries with a view to discover any unregistered instrument (4).

Of what registration of defective conveyance is notice. As a deed defectively executed so as not to pass the title is nevertheless evidence of a contract to convey, notice of such defective deed is equivalent to notice of such contract (5). As between equitable incumbrancers, priority may be gained by

(1) 23 Gr., at p. 394.

(2) *Sherboneau v. Jeffs*, 15 Gr., 574.

(3) *Goff v. Lister*, 13 Gr., 406; S. C., 14 Gr., 451.

(4) *Agra Bank v. Barry L. R.*, 7 E. & L. App. 135 per Lord Selborne.

(5) *Davis v. Earl of Strathmore*, 16 Ves., 419-428.

prior registration, and such priority may be defeated by notice as in other cases (1). A purchaser, whose priority might be defeated under this section by having actual notice of a prior unregistered instrument may, nevertheless, confer a good title to an assignee for value without such notice, who registers his own deed and that to the purchaser before the registry of such prior instrument, or before he acquires notice thereof (2).

It has always been held, in cases decided under the English and Irish Registry Acts, that a purchaser, who has no notice of a prior incumbrance at the time of the execution of his conveyance, can, upon the subsequent acquisition of such notice obtain priority by earlier registration; for his registering in consequence of after acquired notice is no more than would occur under the former law, where an encumbrancer, without notice, protects himself by getting in an outstanding term upon receiving notice of the mesne charge (3). As where a settlement was executed before marriage but not then registered, and subsequent to the marriage the party claiming under the settlement had notice of a prior unregistered incumbrance, whereupon he registered the settlement; it was held, that the prior registration of the settlement, entitled such party to priority over the incumbrance (4).

The word "by" in this section is evidently an

Word
"by" in

(1) *Bethune v. Caulcutt*, 1 Gr., 81.

(2) *In re Flood's Estate*, 13 Ir. C. L. R., 512; see *Lowther v. Carlton*, 2 Atk., 139; see p. 240 *ante*.

(3) *Fisher*, on mtges., p. 655.

(4) *Elsey v. Lutyens*, 8 Hare, 159; *Essex v. Bangh*, 1 Y. & C., C.C. 320; *Reddick v. Glennon*, 6 Ir. Jur., 39; *McNeill v. Cahill*, 2 Bli., 228.

section
should be
"to."

Registry
number
on instru-
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evidence
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tion.

erroneous insertion. The word "to" should have been used instead (1).

In order to ascertain the order of registration, for the purpose of settling the question of priority of registration, the numbers endorsed by the Registrar upon, and assigned by him to the respective instruments in pursuance of the Act, will determine that fact. As where two instruments were registered upon the same day and at the same hour, it was assumed that they were duly entered in the order in which they were received by the Registrar, as indicated by their respective numbers. One of these instruments being numbered 764 and the other 768, the first instrument was deemed to have priority (2).

Under the Registry Laws of the Province of Quebec, however, it has been held that where two deeds have been registered at the same time their relative priority is not decided by their respective numbers, but by the dates at which they were passed or executed (3). Similarly, where the certificate of the registrar shows two deeds to have been registered upon the same day and hour, and that precedence in number has been assigned to one of them, it has been decided that both deeds must, under Stat. 4 Vic., c. 30, s. 11, be collocated concurrently in distribution (4).

As to
equitable
liens, &c
Tacking.

81. No equitable lien, charge, or interest affecting land shall be deemed valid in any Court in this Province as against a registered instrument executed by the same party, his heirs or assigns; and tacking shall not be allowed in any case to prevail against the provisions of this Act. 31 V., c. 20, s. 68.

(1) *Millar v. Smith*, 23 U. C. P., 47

(2) *Neve v. Pennell*, 2 H. & Mil., 170; 33 L. J. (Chy.), 19; see *Moore vs. Mahon*, 2 Ir. Jur. N. S., 277; *Johnson v. Holdsworth*, 1 Sim. N. R., 106; *Westbrook v. Blythe*, 3 El. & B., 737; *Hughes v. Lumley*, 4 El. & B., 274.

(3) *Grenier v. Chaumont*, 5 L. C. Y., 78.

(4) *Lenfesty v. Renaud*, 9 L. C. R., 298.

A lien is not either a *jus in re*, or a *jus ad rem*,^{Lien defined.} that is to say, it is not a property in the thing itself, nor does it constitute a right of action for the thing. It simply forms a charge or encumbrance upon the thing. Liens are either legal or equitable in their character. The former class are created either by express agreement, or by usage of trade, or by mere operation of law; and it is generally essential to the existence of this class of liens that they should be accompanied by possession of the thing on the part of the person claiming the lien. The latter class of liens originate, and are sustained in equity, in cases where they are unknown at law, and generally arise from constructive trusts. They can exist wholly independent of the possession of the thing to which they are attached, and are usually enforced in equity by a sale of the property affected thereby.

A familiar example of an equitable lien is to be found in the vendor's lien for unpaid purchase money, which lien attaches to the land as a trust, whether the vendor executes a conveyance, or only contracts or agrees to execute the deed. * This lien of the vendor is quite independent of any possession on his part, and is enforceable not only against the vendee personally, but also against volunteers, and subsequent purchasers having notice that the purchase money remains unpaid.

A vendor's lien for unpaid purchase money was held to retain priority over the lien created by a judgment registered under the Act 13 & 14 Vic., c. 53 (1), that statute making no change in the

(1) *Hughson v. Davis*, 4 Gr., 588.

rights of equitable encumbrancers (1). The lien of the vendor will be waived by his taking a mortgage for the unpaid purchase money upon the land, or upon any part of it, or upon other lands (2). A purchaser of real estate having executed to his vendor a mortgage for a balance of unpaid purchase money, which mortgage was not registered, it was held under that statute, that the judgment obtained priority, although the deed to the purchaser had been registered (3). The neglect of the vendor to register his mortgage subjects him to the liability of being postponed, and he will not be permitted to repudiate the results of such neglect, and to revert to the lien which he has abandoned. Where the vendor, however, had not taken a mortgage to secure the unpaid purchase money, but instead, had brought an action against the vendee for the amount of such purchase money, and had recovered judgment, it was held, that he had not thereby waived his lien therefor, and was entitled to retain priority in respect of such lien over another judgment creditor of the vendee, who had registered his judgment before the recovery of the vendor's judgment (4).

Equitable
mort-
gages.

Falling within the definition of an "equitable lien, charge or interest affecting land" may be cited that class of mortgages which are not created by the express deeds or contracts of the parties thereto, but from implication in equity, from the nature of the transactions between the parties, and known as equitable mortgages. If the title deeds

(1) *McMaster v. Phipps*, 5 Gr., 253, approved *Ferrass v. McDonald*, 5 Gr., 310; see *McQuestien v. Campbell*, 8 Gr., 242.

(2) *DeGear v. Smith*, 11 Gr., 570; *O'Donohue v. Hembroff*, 19 Gr., 95; *Anderson v. Prott*, *Id.*, 619.

(3) *Burgess v. Howell*, 8 Gr., 37.

(4) *Flint v. Smith*, 8 Gr., 339; see *Graves v. Smith*, 2 E. & A., 9; *Harvey v. Smith*, *Id.*, 480.

of an estate are deposited by a debtor in the hands of his creditor, as security for a debt, or to cover a fresh sum of money or further advances, it amounts to, and is evidence of, an executed agreement for a mortgage of the estate, and will be enforced in favor of the creditor, and the debtor will not be allowed to plead the Statute of Frauds (1). A mortgage having been created through the deposit of the title deeds, and the borrower having signed a memorandum stating the sum loaned and times of repayment, and agreeing to execute a writing in order to enable the lender to transfer or control the mortgages so deposited, it was held, that the memorandum, not being in the language of the Registry Act then in force (2), "a deed, conveyance or assurance affecting lands," did not require to be registered, in order to secure its priority over a subsequently registered incumbrance (3). Under the English Registry Acts it was held, however, that a memorandum not under seal, accompanying a deposit of deeds by way of equitable mortgage, required registration to preserve its priority (4). Equitable mortgages were expressly exempted from the operation of the Registry Laws by the Acts 13 and 14 Vic., c. 63, s. 3, and the Act 18 Vic., c. 127, s. 8, incorporated in the fifty-third section of Con. Stat. U. C. c. 89, and re-enacted by the Act 24 Vic. c. 41, s. 7, ss. 6. This exceptional protection was properly removed by the Registry Act of 1865, the sixty-sixth section of

(1) Pryce v. Bury, 2 Drew, 42; Ex. p. Moss, 3 De G. & Sm., 599; Miller v. Stitt *et al*, 17 U. C. P., 559; see Royal Canadian Bank v. Cummer, 15 Gr., 627; Denistoun v. Fyfe, 11 Gr., 372; Jones v. Bank of U. C., 13 Gr., 74.

(2) C. S. U. C., c. 89.

(3) Harrison v. Armour, 11 Gr., 303.

(4) Neve v. Pennel, 33 L. J. Chy., 19; See Wormald v. Maitland, 35 L. J. (N. S.) Chy., 69.

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v. Hembroff,

2 E. & A., 9;

which is identical with the section under consideration (1).

Retrospec-
tive effect
of section.

Although the sixty-sixth section of the Registry Act of 1865 has been held not to operate retrospectively (2), it has been said that as that statute did not come into force until some months after its passage, the interval was allowed to parties having equitable liens, charges or interests at the time the statute was passed, to enable them to assert their rights, and that all rights not so asserted were summarily extinguished upon the statute coming into effect (3).

Notice of
equitable
lien, &c.

It is essential to the maintenance of the priority of the registered instrument over the equitable lien, charge or interests that the former should be taken without notice of the adverse claim, the statute not avoiding a prior equity against a subsequent registered instrument, where the latter is taken with notice (4). It has been said that this section does not contain any stronger words for excluding notice than are to be found in section seventy-four, *ante*. The language of both sections is absolute, and if the judicial construction of the language of the seventy-fourth section restricts its operation to cases where the registering party, prior to his purchase or mortgage had no notice of the unregistered instrument, it would appear that a similar construction of the eighty-first section cannot be withheld (5).

- (1) See *Millar v. Smith*, 23 U. C. P. at 100; *Gwynne, J.*
- (2) *McDonald v. McDonald*, 14 Gr., 1; *C.*, 16 Gr., 1.
- (3) *Moore v. Bank of B. N. A.*, 15 Gr., 308; *Cooley et al v. Sm.*, 40 U. C. R., 543.
- (4) *Bell v. Walker*, 20 Gr., 558; affirmed *Gray v. Ball*, 23 Gr., 390; see *Sherboneau v. Jeffs*, 15 Gr., 574.
- (5) *Wigle v. Settrington*, 19 Gr., 512; *Forrester v. Campbell*, 17 Gr., 379; *Severn v. McLellan*, 19 Gr., 220; *Haynes v. Gillen*, 21 Gr., 15.

(5) *Forrester v. Campbell*, *supra*.

Notice of a vendor's lien is sufficient to charge a purchaser, if received by him at any time prior to the payment of the whole of the purchase money (1), and the notice must be "actual" in its character (2). The equity asserted by the plaintiff in the case of *Bell v. Walker* (3) was one against which registration affords a due protection (4). The owner of town lots 25 and 26 sold a portion of the latter lot to one P., but, through a mistake, the description in the deed was such as, at law, would pass the whole lot. He subsequently sold to the plaintiff lot 25 and all that part of lot 26 not previously sold to P. The plaintiff's deed was duly registered. Subsequent to the registration of the plaintiff's deed, the defendant obtained a conveyance from P., the description therein being identical with that contained in the deed to P. In conformity to the ruling in *Bell v. Walker*, it was held, that this section applied to interests such as that claimed by the plaintiff (5). This section was enacted to meet and annul the doctrine, that where an equity existed independently of any instrument capable of registration, the Registry Laws did not apply (6).

The section avoids equitable liens, &c., as against registered instruments "executed by the same party, his heirs or assigns." The meaning of this term appears to be involved in obscurity. Is an equitable lien, charge or interest affecting

(1) *Story Eq.*, ss. 461-471; *Peterkin v. McFarlane*, 4 app. R., 25.

(2) *Roe v. Braden*, 24 Gr., 589. As to constructive notice from the absence of a receipt for the consideration money in a conveyance, see *Baldwin v. Daigman*, 6 Gr., 595; *Rev. Stat. (Ont.)*, chap. 109, s. 1, ss. 4.

(3) 20 Gr. 558; see page 306 *ante*.

(4) *Id.*, p. 563.

(5) *Haynes v. Gillen*, 21 Gr., 15. See *Gillen v. Haynes*, 33 U. C. R., 516; *Jamieson et al v. McCollum*, 18 U. C. R., 445.

(6) *Per Spragge C.*, *Roe v. Braden supra*. See *Cooley et. al. v. Smith*, 40 U. C. R., 543.

Meaning
of term
"same
party,&c."

lands valid as against a purchaser for value, without notice, claiming under a registered instrument executed by a person other than "the same party, his heirs or assigns?" Independently of the Registry Act, an instrument affecting land executed by a party, who claims an equitable as well as a legal interest in the land, passes the equitable interest, and the grantor cannot afterwards set up such equitable interest. This section, therefore, if restricted in its operation to cases where the registered instrument is executed by the party having, or claiming to have, the equitable interest, and to his heirs and assigns, will be simply re-enacting a well understood rule. As the policy of the Act is to protect *bona fide* purchasers for value from secret claims or interests, it would seem that it is not conditional to the avoidance of an equitable lien, charge or interest affecting land against a registered instrument conveying such land, that the registered instrument should be executed by the party claiming such lien, charge or interest, his heirs and assigns, but that the same will be postponed or deierred where the instrument is executed by a person not having the lien, charge or interest. Sprage, V. C., in *Grey v. Ball* (1), remarking upon the language of this section, observes: "I have, I confess, not been able to satisfy myself as to the intention of the Legislature in the use of the words in the section quoted 'executed by the same party, his heirs or assigns.' The primary meaning of these words would be 'executed by the party who has the equitable lien, charge or interest,' and the clause would read, that no equitable lien, charge or interest shall be deemed valid in any Court as

(1) 23 Gr., 390.

against a registered instrument executed by the party having such equitable interest. But what as to registered instruments executed by others than those having such equitable interests—are they to continue to be valid as against them? It is in comparatively few cases that the party having the equitable interest and the party executing the registered instrument are (not) the same, and where they are the same, the aid of this provision in the statute would not be needed. It is impossible, I think, that the Legislature could have intended to confine the operation of this salutary provision to such cases; because if so confined, it would practically be a dead letter, and would disappoint the obvious intention of the Legislature."

It is further provided that "tacking shall not Tacking.
be allowed in any case to prevail against the provisions of this Act."

Tacking is a doctrine of equitable origin, and The ori-
has been defined as the union of two or more gin.
securities given at different times, in order to exclude or prevent an intermediate purchaser or encumbrancer from redeeming or discharging a lien which is prior in date, without also redeeming or discharging a lien which is subsequent to his own (1). Where a third mortgagee, not having Illustration.
had notice, at the time of his advancing the money to the mortgagor, of the execution of the second mortgage, paid to the first mortgagee the amount of the principal money, interest and costs due on the said mortgage, he could take an assignment thereof, and be entitled to stand in the previous

(1) *Marsh v. Lee*, 1 Ch. C., 162; 1 W. & T., L. C., 550; see *Bruce v. Duchess of Marlborough*, 2 P. W., 491; *Hopkinson v. Rolt*, 9 H. L., 574.

situation of the first mortgagee, with respect to the sum due upon such first mortgage security, upon the ground of his defraying such first mortgage; and he was permitted, in addition, to be preferred to the second, or *mesne* incumbrancer, in respect of his own mortgage, which he could tack on the first mortgage security, upon the principle, that, in such a case, the legal and equitable estates were vested in the same person, while the *mesne* incumbrancer had only an equitable title, which cannot prevail against one having the both, according to the maxim "in aequali jure melior est conditio possidentis" (1).

Tacking did not obtain where the party claiming the benefit thereof had notice of the prior or *mesne* incumbrancer (2).

Tacking
abolished

13 & 14
Vic., ch.
63.

The doctrine of tacking was never favorably regarded in this Province. The Registry Act of 1846 had a partial operation in the prevention of tacking (3), and the doctrine being admittedly antagonistic to the general policy of the Registry Law, as well as being productive of injustice, was removed by the Act 13 & 14 Vic., cap. 63, sec. 4 (4). It has been said that that statute did not in terms abolish tacking (5). To remove all doubt upon this point, the Registry Act of 1865 (6) expressly provided that tacking should not be allowed in any case to prevail against the provisions of that Act. This provision is retained in the section under consideration.

(1) *Gordon v. Lethian*, 2 Gr., 293; *Hyman v. Roots*, 10 Gr., 340; *McMurray v. Burnham*, 2 Gr., 289.

(2) *McMurray v. Burnham*, *supra*.

(3) See C. S. V. C., c. 89, s. 56. See *Bethune v. Calcutt*, 1 Gr., 81.

(4) See C. S. U. C., c. 89, s. 56.

(5) See *Buckley v. Bowman*, 12 Gr., 457.

(6) Sec. 66.

A mortgagor's devisee was held not entitled to redeem the mortgage, without also paying a judgment held by the owner of the mortgage against the mortgagor. This is not such tacking as the section forbids, being based upon the desire to avoid circuity of action (1). When the owner of property mortgaged it to W., and then assigned an undivided half to J., subject to the mortgage, and afterwards mortgaged his remaining half to B., who afterwards obtained an assignment of the said mortgage, it was held that the representatives of J. were not bound to redeem both mortgages, but only the mortgage to W. (2). The rule of equity, which permits the holder of several mortgages created by the same mortgagor upon separate properties to consolidate the debts, and insist on being redeemed in respect of all before releasing any one of his securities, is not "tacking," and is not such a claim as the Registry Act declares shall not be allowed to prevail against its provision (3). In this case, L. mortgaged both lots to K., and afterwards, in 1875, conveyed to K. all his interest in lot 29. The plaintiffs in their Bill charged notice by K. when he obtained his mortgage and took the conveyance of both mortgages in favor of the plaintiffs, and claimed that the plaintiffs were entitled to unite their securities as against L., and all persons claiming under him subsequently to the second mortgage to the plaintiffs, and that he and they were not entitled to redeem either parcel without paying off the whole

What does not amount to tacking.

Consolidation of mortgages.

(1) McLaren v. Fraser, 17 Gr., 533; see McKinnon v. Anderson, 17 Gr., 636; Fisher on Mortgages, s. 219.

(2) Buckley v. Bowman, 12 Gr., 457; see Ferguson v. Frontenac, 21 Gr., 188.

(3) Dominion Savings & Investment Co. v. Kittridge, 23 Gr., 631.

General
rule as to
consolida-
tion of
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gages.

amount due to the plaintiffs in respect of both mortgages. Blake, V. C., in his judgment, said (1), "The general rule that a mortgagee can hold two mortgages on different properties given by the same mortgagor until payment of both mortgages, even when one of the properties finds its way into the hands of a purchaser, is too well established to be now impugned. But it is argued here that the rule must give way to the clause in the Registry Act, 'and tacking shall not be allowed in any case to prevail against the provisions of this Act.'" The first answer to this position is, that the uniting of two mortgages in one hand against the same mortgagor, is not "tacking." The word "tacking" had, at the time of the passing of these Acts 29 Vic., c. 24, and 12 & 14 Vic., c. 63—consolidated by chapter 87 (*sic*) of the Con. Stat. of U. C.—a well-defined meaning, and was not then, as it cannot be now, correctly applied to a claim such as that made by the plaintiffs in respect of the two mortgages in question. But even if, for the sake of argument, it were admitted that the term "tacking" is applicable to the present, it is not every case in which it is abolished. It is not "allowed in any case to prevail against the provisions of this Act." The Act makes registration notice—that is constituted the test—and here both mortgages being registered, and the defendant *Kittridge* dealing with both of the lots, had that notice which this Act intended he should have. It is not, therefore, easy to see what provisions of the Act are violated when the prior mortgagee asks that the person subsequently dealing with the premises shall be held bound by the information found at

(1) At p. 634.

the Registry Office I think the defendant *Kittridge* took his mortgage with notice through the Registry Office of all those encumbrances which give the plaintiffs the right now claimed, and that on the first ground taken, it cannot be defeated." The right to consolidate separate mortgage debts on separate properties being an equitable one (1) will not, under this section, be allowed in favor of the holder of the mortgages against a *puisne* encumbrancer of one of the mortgaged properties without notice, although such right will be enforceable as against the mortgagor himself (2). The case of the Dominion Savings and Investment Company v. *Kittridge*, was commented upon and distinguished. The head note to the case of *Hyman v. Root* (3) was referred to in a note as being evidently erroneous in representing it as one of tacking, it being in reality for consolidation.

Equitable right of consolidation will not affect purchaser without notice.

As there were no express provisions against tacking in the English Registry Acts, it was not interfered with by the fact that the mesne incumbrancers were registered (4). By the Vendor and Purchaser Act (Imp.,) 1874, however, tacking has been abolished.

Tacking has been excluded by the Irish Registry Act (5), in cases where the Act is applicable (6);

(1) *Willie v. Lugg*, 2 Eden, 78.

(2) *Brower v. Canada Permanent Building Association*, 24 Gr., 509; see *Street v. the Commercial Bank*, 1 Gr., 169.

(3) 10 Gr., 340.

(4) *Wrightson v. Hudson*, 2 Eq. Ab., 609; *Carter v. Cooley*, 1 Cox, 182.

(5) 6 Anne, cap. 2, s. 4.

(6) *Drew v. Lord Norbury*, 9 Ir. Eq. R., 171; see *Carlisle v. Whaley*, L. R. 2, H. of L., 391.

although it is still permitted in cases unaffected by that statute (1).

In most of the United States the doctrine is repudiated (2).

(1) *Tenison v. Sweeney*, 7 Ir. Eq. R., 571.

(2) *Thomas on Mtges.* 100; see *Peabody v. Patton*, 2 Pick., 520.

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CHAPTER XI.

MISCELLANEOUS PROVISIONS.

- (a) Plans.
- (b) Re-registration, &c., where Registry Books lost &c.
- (c) Defects in registration cured.
- (d) List of Crown Grants to be furnished to Registrars.

§82. Registration of plans of division of lands into smaller parcels. Scale of plan and what to shew.

2. Duty of registrars thereafter. Instruments must conform to such plan.

3. Penalty for refusing such plan. How recovered.

4. To what land this section applies.

§83. When plan must be registered in case of lands subdivided before this Act. How to be made.

§84. Plan not binding until some sale is made under it; alterations in plan.

§85. Plans of towns or villages to be registered in certain cases. How to be certified.

2. Expense how paid.

§86. Provisions for re-registration in case registry books or papers are lost or destroyed.

§87. Registration made before 4th March, 1868, not to be deemed void for certain defects. Registration in books for unincorporated villages. Proviso.

§88. Defective registrations before 29th March, 1873, not to be deemed void.

§89. Registrations, etc., not to be deemed void by absence of certificates, etc., in margin of books.

§90. The case of a township made part of a new township without change of registry books provided for. Proviso.

(a) PLANS.

82. Wherever any land or original Town or Township lot has been surveyed or subdivided into Town or Village lots, or other lots so differing from the manner in which said land or lot was surveyed or granted by the Crown, that the same cannot or is not, by the description given of it, easily and plainly to be identified, the person, corporation, or company, making such survey or subdivision, their heirs, executors, administrators or assigns, attorneys or successors, shall, within three months from the date of every such survey, or subdivision, lodge with the Registrar a plan or map of the same, on a scale of not less than one chain to every four chains, showing the number of the Township or Town lots, plan and Range or Concession, the number or letters of Town or Village lots, and names of streets, with the astronomical or magnetic shew.

bearing of the same, and showing thereon all roads, streets, lots, and commons within the same, with the courses and widths thereof respectively, and the width and length of all lots, and the courses of all division lines between the respective lots within the same, together with such information as will shew the lots, concessions, tracts, or blocks of land of the Township wherein the same is situate.

Duty of Registrar thereafter. 2. Every such map or plan, before being registered, shall be signed by the person or the chief officer of the corporation, by whom or on whose behalf the same is filed, and shall also be certified by some Provincial Land Surveyor, in the form of Schedule L to this Act; and thenceforth the Registrar shall keep an index of the lands described and designated by any number or letter on such map or plan, by the name by which such person, corporation or company designates the same in the manner provided by this Act; and all instruments affecting the land or any part thereof, executed after such plan is filed with the Registrar, shall conform thereto, otherwise they shall not be registered.

Penalty for refusing such plan. 3. In the case of refusal by such person, corporation or company, his or their executors, agents, or attorneys, or successors, for two months after demand in writing for that purpose, to lodge the said plan or map when required by any person interested therein, or by the Inspector so to do, he or they shall incur a penalty of twenty dollars for each and every calendar month the said map or plan remains unregistered, which penalty may be recovered by any person complaining, in any Division Court in the county in which such lands are situated, in like manner as a common debt.

To what land this section applies. 4. This section shall apply as well to lands already surveyed or subdivided as to those which may hereafter be surveyed or subdivided, subject to the next succeeding section. 31 V., c. 20, s. 75; 35 V., c. 29, s. 1; 39 V., c. 7, s. 15.

Filing plans, &c., under Reg. Act of 1846. In the Registry Act of 1846 (1) provision was made for the registration by any person, corporation or company, of plans or maps of lands surveyed and subdivided by him or them into town or village lots, in a manner differing from the description of such lands as contained in the patents thereof from the Crown. Such registration was not, however, made imperative.

Under 12 Vic., c. 35. By the statute 12 Vic., cap. 35, it was enacted that the original owners of lands which formed the site of any town or village, or their heirs, agents, &c., should, within one year next after the passage of that Act (2), cause to be made and deposited

(1) Sec. 33.

(2) May 30th, 1849.

in the proper Registry Office, a fair and correct plan or map of such town, village or original subdivision thereof which was to be certified by a Land Surveyor and by such original owners therof, or their representatives; and that in default thereof, a penalty should be incurred. It was further enacted that copies of the map or plan so deposited, certified by the Registrar as correct, should be taken as evidence of the original plan and survey of such town, village, or original subdivision. This act being retrospective only, and not affecting plans or maps of surveys made subsequent to its coming into operation, and the optional system necessarily resulting in confusion and uncertainty, advantage was taken of the consolidation of the statutes in 1859, to render it compulsory upon parties to register plans and maps of surveys (1).

The Registry Act of 1865 still further amended the law in this respect, and required (2) the plans or maps to be lodged in the proper Registry Office, within three months from the date of survey, and to be certified to as being correct by a Land Surveyor, and by the original owner or his representatives. It was also provided that no instrument affecting the land so divided or any part thereof, executed subsequent to such plan, should be registered unless it should conform thereto.

These provisions were retained in the Registry Act of 1868 (3), the only alterations being that the map or plan did not require to be certified to by the owner or his representatives, the certificate by the Provincial Land Surveyor being deemed suffi-

(1) C. S. U. C. c. 89, s. 79.

(2) Sec 73.

(3) Sec. 75.

39 Vic.,
c. 7.

cient; and that the Inspector could require such map or plan to be lodged in the Registry Office. Since the Act 39 Vic., cap. 7 (1), the map or plan is required to be signed by the person or the chief officer of the corporation, by whom, or on whose behalf the same should be filed, in addition to the certificate of the Provincial Land Surveyor.

Not compulsory to
file plans
before
1866.

Prior to the Registry Act of 1865 it was not imperative that instruments affecting the lands covered by town or village lots should be registered in accordance with, or conform to, the plan lodged in the Registry Office, and the Registrar was not at liberty to refuse to register an instrument affecting any township lot, or a part thereof, on the ground of its nonconformity to any plan filed in his office, provided the instrument otherwise was in accordance with the Registry Law.

Instruments
must conform to
plan.

A Registrar being required to record a certificate of *lis pendens*, affecting "lot number sixteen in the ninth concession of the township of Erin, and lots number fourteen and fifteen in the tenth concession of the same township," refused to do so, on the ground that the west halves of lots fourteen and fifteen had been laid out into village lots, according to a plan filed in his office. On application for a mandamus, it was held that, so far as regarded the west halves, he was right, for the seventy-third section of the Registry Act of 1865 required that the certificate should show the village lots affected (2). In delivering the judgment of the court, Morrison J., referring to that section, remarked, "It is, we think, evident that the Legislature by this clause * * * intended to remedy what was considered a defect as the law

Intention
of Legis-
lature.

(1) Sec. 15.

(2) In *re Thompson et al.*, v. Webster, 25 U. C. R., 237.

formerly stood, the want of conformity in the registration of instruments affecting lands, originally township lots, and laid out into village lots, and making it compulsory upon persons claiming title to lands forming the site of a village, after the plan of the same has been duly prepared and deposited in the proper office, to register all instruments affecting any of such village lots in the same manner as if the village lots were from that time described in grants from the Crown; the chain of title and instruments affecting the land prior to the lodging of the plan being registered and indexed against the original lot as patented in the manner provided for township lots; one of the objects the Legislature had in view, in compelling such a course of registry, being to simplify the state of the title in the Registry Office; so that any owner, intending purchaser, or person interested in ascertaining the title to any particular village lot, could, by a glance at the Registry Index Book, see from the references set against the particular village lot the instruments affecting it on registry since the date of the filing of the plan."

The instrument must show on its face what particular town or village lot and their designation on the plan which it is intended to affect.

What is meant by conformity to plan.

In a survey the land was divided into blocks with streets running through them, and the blocks were sub-divided into lots which were numbered, in all from 1 to 174 inclusive. Held, that a sale of any such lots by their numbers only would be a sufficient description, and that if named incorrectly as being on one of the streets, it would not vitiate a private sale, as anything beyond the numbers in such sub-division would be surplusage, and the

Act does
not apply
where
whole lot
or undi-
vided in-
terest
sold.

same would apply to a tax sale (1). The Act applies to a case where a part of the land sub-divided has been sold and cannot, by the description, be easily and plainly identified without reference to the plan ; but where the whole original lot is sold, or an interest in it, the objection will not be tenable (2). Although portions of township lots have been laid off into village lots this presents no objection to an undivided interest in the township lots, as originally described, being sold under execution ; and the purchaser at Sheriff's sale is entitled to hold the interest acquired under such sale, notwithstanding the Sheriff's deeds, so far as they concern the village lots, do not comply with the Registry Act of 1846 and this Act, and notwithstanding that the present Act prohibits the registration of deeds of any portion of lots so laid out, unless they conform to the plan of the property as filed (3).

Nor if plan
applies to
reserva-
tions in in-
struments.

There is no obligation to file a plan which only refers to reservations or exceptions mentioned in an instrument, as long as the property granted is not expressed to be in accordance therewith. M. was owner of the east half of a certain lot of land. In 1872 he employed one S. to draw a plan of a portion of the lot, upon which some lots were lettered and others numbered. The land in question was marked in the plan as "The Parsonage," but was neither numbered or lettered. The plan so marked was never registered. In 1874 M. mortgaged the said half lot to B., one of the defendants, "reserving thereout lots numbered from 1 to 181, both inclusive, as shown on a plan made by S. and dated 1872," and during negotiations for the loan

(1) *Aston v. Innis*, 26 Gr., 42.

(2) *Rathburn v. Culbertson*, 22 Gr. 465.

(3) *Ib.*

M. left a lithographed copy of the plan in B's possession. B. registered the mortgage, but took no steps to register the plan; subsequently M. altered his plan by running a street through lots 106 and 115 and transferred the number 106 to the parsonage lot. The date of the plan remained as in 1872, and M. then registered it in its altered state. In 1876 M. applied to the plaintiff for a loan upon lot 106, or "the parsonage lot." An abstract was obtained by the plaintiff from the Registrar, from which the prior mortgage from M. to B. was omitted, the Registrar considering that inasmuch as lots 1 to 181 inclusive, were excepted from B's mortgage, the property in question was not affected by it. A mortgage was then made by M. to the plaintiff. B. having foreclosed, and the plaintiff having brought ejectment against B. it was held that the defendant's title must prevail on the grounds: first, that no obligation was cast upon B. under the Registry laws or otherwise to register the plan, which was only referred to in describing the reservation from his mortgage; secondly, that B.'s title was complete by the registration of his mortgage upon the township lot; and, thirdly, that if from any cause the exception or reservation from the property mentioned in B.'s mortgage proved abortive or ineffectual, B. was entitled to the excepted portion also (1).

As to whether the omission of the owner to sign the certificate for filing the plan will render such filing ineffectual, see remarks of Proudfoot, V. C. in *Wyoming v. Bell* (2).

Neglect of owner to sign map.

The plan of a survey of a portion of a town plot was registered in the proper Registry Office, but without being regularly authenticated in the man-

Or of Surveyor.

(1) *Muttlebury v. King et al.*, 44 U. C. R., 355.

(2) 24 Gr., at pp. 568-9; *Dillon on Corporations*, s. 498.

ner required by sub-section 2 of this section, in that it was not duly certified by a surveyor. It was held that, notwithstanding this irregularity, the municipality had the right to assess these lots and levy the taxes assessed by sale in the usual way (1). As to whether a plan can be considered an instrument see *Lindsey v. Corporation of Toronto* (2).

Plans, &c.,
to be lodged
with
Treasurer
of municipi-
pality.
43 Vic.,
c. 24.

To facilitate assessment for municipal purposes, every person who is required by this Act to lodge a plan or map of any survey or sub-division of land made by him must also under the Statute 43 Vic., cap. 24 (3) within three months of the date of such survey, lodge a duplicate copy of such plan or map with the treasurer of the municipality in which the land is situated, and in case of neglect or refusal to do so within two months after notice in writing, given to him by such Treasurer, requiring him to lodge such plan or map with him, he will incur a penalty of twenty dollars for each month during which such default shall be made. As no mode for the recovery of this penalty is prescribed by the statute just cited, the Interpretation Act will govern (4).

Copies of every plan or map filed in the Registry Office under this and following sections of this Act may be obtained from the Registrar, and being certified as correct by the Registrar, shall be taken in all Courts as evidence of the original thereof, and of the survey of which it purports to be a plan or map (5).

The Registrar must make a record of every plan

(1) *Aston v. Innis*, 26 Gr., 42.

(2) 25 U. C. P., 335.

(3) See, 26.

(4) Rev. Stat. (Ont.), Cap. 1, s. 8, ss. 29.

(5) Rev. Stat. (Ont.), Cap. 146, s. 73.

or map made and deposited with him, and after the day and year of such deposit (1).

83. In sales of lands under surveys or subdivisions made before the fourth day of March, eighteen hundred and sixty-eight, where such surveys or subdivisions so differ from the manner in which such land was surveyed or granted by the Crown, that the parcel so sold cannot be easily identified, the plan or lands surveyed shall be registered within six months after the passing of this Act, if the plan or survey is still in existence and procurable before this Act, for registration, and filing under the next preceding section, and Act. If it is not, a new survey or plan shall be made by and at the joint expense of the persons who have made such surveys or subdivisions, and of all others interested therein, by some duly authorized Provincial Land Surveyor, as nearly as may be according to the proper original survey or subdivision, and the same when so made shall be filed as if under the next preceding section of this Act, 31 V., c. 20, s. 76.

The provisions of this section first appeared in the seventy-fourth section of the Registry Act of 1865, which was re-enacted in the seventy-sixth section of the Registry Act of 1868 (1).

This section is retrospective in its operation, and appears to be applicable only in the cases of sales of land under surveys or subdivisions made prior to March 4th, 1868, where the land has been surveyed or subdivided into lots or parcels other than town or village lots, which are governed by the preceding section. In case no sales have been made under such survey or subdivision the section will, of course, not come into effect. If the plan or survey is not in existence and procurable for filing under the preceding section, it is provided that a new survey or plan shall be made and filed, but no definite period is laid down within which this should be done. It is submitted that any person interested in such new survey or plan being made and filed, may notify the persons who have made the former map or subdivision, and others interested therein, to proceed with such

(1) R. sec. 74.

new survey or plan, and that, in case of refusal or neglect on their part to do so within a reasonable time after the date of such notice, he will be entitled to cause to be made a new survey or plan by some Provincial Land Surveyor at the joint expense of such persons as the section provides. This liability to contribute to the joint expense can, of course, be enforced by action.

Plan not binding, until some sale is made under it.

Alterations in plan.

Alterations under C. S. U. C., cap. 89.

24 Vic., c. 49.

84. In no case shall any plan or survey, although filed and registered, be binding on the person so filing or registering the same, or upon any other person, unless a sale has been made, according to such plan or survey, and in all cases amendments or alterations of any such plan or survey may be ordered to be made, at the instance of the person filing or registering the same or his assigns, by the Court of Queen's Bench or Common Pleas, or by the Court of Chancery, or by any Judge of any of the said Courts, or by the Judge of the County Court of the County in which the lands lie, if on application for the purpose duly made, and upon hearing all parties concerned, it be thought fit and just so to order, and upon such terms and conditions as to costs and otherwise as may deemed expedient 31 V., c. 20, s. 77; 39 V., c. 25, s. 4.

It was provided by Con. Stat., cap. 93, sec. 37, that owners of land laid out in town or village lots might alter their first survey and plan, provided no lots had been sold fronting on or adjoining any street or common where the alteration was made. This was repealed by the statute 24 Vic., cap. 49, sec. 1, which permitted the total or partial cancellation of any survey of any town or village, or of any original subdivision of any town or village, and of any map or plan thereof, provided that no part of any street or streets should be altered or closed up, upon which any lot of land sold in such town or village or original division thereof abutted, or which connected any such lot with, or afforded means of access therefrom to the nearest public highway. This enactment is still retained in the "Act respecting the Survey of Lands" (1).

(1) Rev. Stat., (Ont.) c. 146, s. 72.

C. owned township lot 32, and H. lot 31, adjoining it on the east. In 1856 H. laid out part of lot 31 into village lots, and filed a plan thereof in the proper Registry Office, shewing streets running east and west through the lot, designated respectively first, second, third, fourth, and fifth streets. This survey was called Hodges' Block. In 1858 C. laid out the east part of lot 32 into village lots, by a plan also registered. In the latter survey, a street, called Augusta Street, ran north and south, along the east side of lot 32, and from it streets ran westerly, numbered 1, 2, 3, 4, and 5, corresponding to and being a continuation of first, second, third, fourth, and fifth streets, or Hodges' Block, Augusta street only intervening. This latter survey was called "Casselman's Block." None of the lots abutting on "Fourth Street" in Hodges' Block had been disposed of, and the shutting up of "Fourth Street" did not debar any person who had bought any lot in Casselman's Block from access to the nearest public highway. Some village lots abutting on "Street 4," in Casselman's Block, had been sold to various persons, including the private prosecutor in the case. On April 18th, 1865, the defendant, who was at that time the owner in fee in possession of the plot known as Hodges' Block, in pursuance of the Act, 24 Vic., cap. 49, caused a new survey and plan of Hodges' Block to be made, and, in accordance, with the Con. Stat. U. C., cap. 93, and on the same day, deposited and filed the plan in the Registry Office, partially cancelling and making void the first survey and plan. Among other alterations effected in the new and registered plan, the defendant cancelled "Fourth Street," and afterwards fenced it in. Having been indicted for nuisance

Plan may be altered if lots sold do not abut street closed up or a continuation thereof.

Regina v. Rabidge.

in stopping up "Fourth Street," and found guilty, the defendant appealed. The verdict of the jury was set aside, the Court holding that under the statute, 24 Vic., cap. 49, the defendant might, by a new survey and plan, close up "Fourth Street," on his land: for the laying out of a street in continuation of it by C., did not make it all one street, so as to render the proviso in that statute applicable. In delivering the judgment of the Court, Morrison, J., said: It is clear that, under the provisions of the 24 Vic., cap. 49, the defendant was entitled to make a new survey and plan of Hodge's Block, and to partially cancel the survey and plan previously made, subject to the proviso in that Act contained—that no part of any street should be altered or closed up, upon which any lot of land sold on such original division abutted, or which connected any such sold lot with, or afforded means of access therefrom to, the nearest public highway. The defendant, under the authority of that Act, made a new survey and plan, and he cancelled a portion of the first survey, including in such cancelled portion, "Fourth Street" in question, a street on which, as appears by the case, no lot abutting had been sold, and, consequently, not a street within the proviso * * * The 24 Vic., c. 49, was evidently passed to enable proprietors of such original divisions to cancel or partially cancel, and vary surveys and plans made under the provisions of Chapter 93, Con. Stat. U. C.—many of such surveys from various causes that might be suggested, becoming unsuitable for the purposes originally designed, the Legislature only imposing the restriction contained in the proviso to protect the rights of purchasers of lots abutting on streets in such original division. The defendant, in our

Object of
Stat. 24
Vic., c. 49.

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judgment upon the case stated, was entitled to an acquittal, and the learned chairman should have so directed the jury" (1).

The present section was first incorporated with the Registry Law by the Registry Act of 1865 (2), and re-enacted in the Registry Act of 1868 (3). The privilege of applying to the Courts for liberty to amend or alter the plan or survey, was subsequently extended to the assigns of the person filing or registering same (4).

From the language of the section it would appear that application will still have to be made to the Court for power to *amend or alter* the plan or survey as originally filed or registered, notwithstanding that no sale may have been made according thereto, as the words "in all cases" would include such a case. As such application is confined to those cases where "amendments or alterations" are desired, it seems that an entirely new plan or survey might be filed or registered by the person filing the first plan or survey, or his assigns, in substitution of such first plan or survey, without applying to the Court, provided no sale has been made according to the first plan or survey. In such case the new plan or survey must be so distinct in its character from the first plan or survey, as not to be considered as practically an amendment or alteration thereof.

Where a person has sold lots according to a plan duly deposited in the Registry Office, or which plan a lane is laid out in the rear, he is bound by this dedication, and cannot afterwards shut up

- (1) Reg. v. Rubidge, 25 U. C. R., 299.
- (2) Sec. 75.
- (3) Sec. 77.
- (4) 39 V., c. 25, s. 4.

such lane. The fact that he has previously conveyed portions of the land comprised in the lane, will only affect so much as he has thereby precluded himself from giving up to the public, and will not entitle him to close up the whole (1).

Of streets,
squares,
&c.

When a map or plan is exhibited as a particular of sale, presenting on its face roads, streets, squares and other advantages and attractions, and purchases are made in accordance with, and on the faith of, such map or plan, the person so laying out the land and exhibiting the map or plan will not be permitted to subsequently divert the land appropriated to such uses to other purposes, although he may not be bound to construct all the roads, streets and squares which are shewn upon the map (2). The laying out upon a map of an intended town, of squares or other open places for public amusement, or other public purposes, is as effectual a dedication of them for such purposes, as in the case of streets (3). It appears, however, the fact of a sale having been effected according to a plan of the property, upon which were then certain roads leading to the several lots, does not bind the vendor to make such roads. But the Court will in such a case restrain the diversion to any other purpose of the land appropriated for such roads (4).

Plans of
towns or
villages to
be regis-
tered in
certain
cases.

85. Where any incorporated Town or Village, or Village not incorporated, comprises different parcels of land owned at the original division thereof by different persons, and the same were not jointly surveyed and one entire plan of such survey made and filed in accordance with the eighty-second section of this Act, the Municipality of the Township within which such Village is situated, or the Municipality of such incorporated Town or Village

(1) *Reg. v. Boulton*, 15 U. C. R., 272; see *O'Brien et al. v. The Village of Trenton*, 6 U. C. P., 350; 7 U. C. P., 246.

(2) *Rossin v. Walker*, 6 Gr., 619.

(3) *Guelph v. The Canada Company*, 4 Gr., 632; *Saugeen v. The Church Society*, 6 Gr., 538; *Attorney-General v. Brantford*, 6 Gr., 592; *Attorney-General v. Goderich*, 5 Gr., 402.

(4) *Saugeen v. The Church Society*, *supra*.

shall upon the written request of the Inspector or of any person interested, addressed to the Clerk of the Municipality, immediately cause a plan of such Town or Village to be made, upon the scale provided for under this Act, and to be registered in the Registrar's Office of the County within which such Village lies, certified, which map or plan shall have endorsed thereon the certificates of the Clerk and Head of the Municipality and the Surveyor, that the same is prepared according to the directions of such municipality, and in accordance with this Act; and to the said map or plan, the corporate seal of the Municipality shall be attached.

2. The expense attending the getting up and depositing of such map or plan shall be paid out of the general funds of the municipality, except in the case of unincorporated villages, where the same shall be paid by a special rate, to be levied by assessment on all rateable property, comprised in the village and described by metes and bounds in a by-law to be passed by the municipality for the purpose of levying such rate; and in case of the refusal of such municipality to comply with all the requirements of this section within six months next after being required in manner aforesaid so to do, such municipality shall incur the same penalty, and the same shall be recoverable in the same manner as provided in the eighty-second section of this Act, 31 V., c. 20, s. 78.

As remarked in the notes to section eighty-two, *Formerly ante*, it was not until the consolidation of the Statutes in 1859, that it was made compulsory to register plans and maps of surveys. By that time there were many unincorporated villages, of which no plan or map had been deposited in the proper Registry Offices, in consequence of the several original owners of the lands comprising such villages, not having jointly laid out and surveyed the same, or because some of the original owners had left no legal representatives. In order, therefore, to provide for this state of things, as well as to amend the law relating to the deposit of plans of such villages, the statute 22 Vic., cap. 42 ^{22 Vic. cap. 42}

1), enacted that where an unincorporated village comprising different parcels of land owned, at the original division thereof, by two or more persons, was not jointly surveyed and laid out into a village plot, and when no entire plan or map of such village had been registered, the Municipal Council of

(1) See C. S. U. C. s. 89, s. 79.

the township in which such village was situated, were required immediately on the passing of that Act (1) to cause a plan or map of such village to be made and registered; the expense connected therewith to be borne out of the general funds of the municipality, or by a local tax upon the rate-payers of such village. The Act was retrospective in its operation, but was rendered prospective when consolidated.

It will be noticed that the statute 22 Vic., cap. 42, applied only to unincorporated villages. Its provisions were subsequently extended to incorporated towns and villages by the Registry Act of 1865 (2), which also required the municipality, upon the written request of the Inspector of Registry Offices, or of any person interested therein, to immediately cause a plan of such town, village or unincorporated village to be made and registered, and to be endorsed with the certificate of the Clerk and head of the municipality and Surveyor, that the same was prepared according to the direction of the municipality and in accordance with that statute, and to have the corporate seal of the municipality attached thereto. The expense of making and depositing the map or plan was directed to be defrayed out of the general funds of the municipality. Neglect to comply with the requirements of the Act within six months after being requested in writing so to do, rendered the municipality liable to incur the same penalty as that referred to in the seventy-third section of that Act (3).

The Registry Act of 1868 (4) re-enacted this provision; merely amending it, as it now reads, in

(1) May 4th, 1859.

(2) Sec. 76.

(3) Corresponding to sec. 82, *ante*.

(4) Sec. 78.

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regard to the question of meeting the expense of getting up and depositing the map in the case of an unincorporated village, by requiring that the expenses should be paid by a special rate, to be levied by assessment on all rateable property comprised in such village, as described by metes and bounds, in a by-law to be passed by the municipality in which such village should be situated, for the purpose of levying such rate.

Forms of request to the Clerk and of the certificates of the Clerk, head of municipality, and surveyor, will be found in Appendix A.

b) REGISTRATION WHERE REGISTRY BOOKS LOST, &c.

86. In any case where the Registry Books and papers have been, before the fourth day of March, eighteen hundred and sixty-eight, lost or destroyed, and the memorials are not forthcoming, upon proof being made to that effect before a Judge of any Court of Record in this Province, to the satisfaction of such Judge as evidenced by a certificate under his hand, it shall be lawful for the Registrar for the County where the lands are situate to register the instrument upon production thereof, and no further proof shall be required by the Registrar than the original certificate of registration endorsed on such instrument; and any such instrument shall have priority according to the date of the original certificate.

Provisions for registration in case registry books or papers are lost or destroyed.

2. The instrument shall be filed away by the Registrar and preserved with the records of his office, and in case memorials have not been copied into the Registry Books in their proper order, the Inspector may cause the same to be entered in proper books, to be procured for the purpose, in the same manner as provided in section twenty-five of this Act, and the Registrar shall be paid therefor in the same manner as under sub-section seven of the ninety-second section of this Act, 31 V., c. 20, s. 79.

Prior to the Registry Act of 1865, no similar provision existed. By that Act (1) re-registration was authorized to be made of any registered instrument, the memorial of which was not to be obtained, owing to the loss or destruction of the registry books and papers prior to the Act coming into force, upon proof thereof being made to the satisfaction of the Judge of any Court of Record in

Introduced by Registry Act of 1865.

this Province as evidenced by his certificate to that effect. This salutary enactment was renewed in the Registry Act of 1868 (1), which extended its retrospective operation to the fourth day of March, 1868, the date when the act was assented to ; and also provided for the copying of the memorials into proper registry books, &c.

Retrospec- It will be noticed that the beneficent operation- tive opera- of this section is expressly restricted to cases of loss and destruction of registry books and papers occurring prior to the 4th March, 1868, and that no provision is made to meet those cases that may arise subsequent to that date. What the considerations were that induced the Legislature to confine the benefits conferred by this section to the period antecedent to the passage of the Registry Act of 1868, does not very clearly appear. This section should be so amended as to provide for the future loss or destruction of the registry books and papers, as well as for the past, in order to guard against the inconvenience and annoyance, as well as the probable loss and damage, which must otherwise necessarily ensue.

Omission in section. The absence of the words "or a duplicate original" after the the word "memorials" in the third line of the first sub-section, and second line of the second sub-section respectively, is evidently attributable to an oversight on the part of the framer of the Registry Act of 1868, when re-enacting the corresponding section of the Registry Act of 1865. The latter statute having introduced the system of registration at full length in substitution for the former method through memorials (2), the possibility of loss or destruction of registry books and

(1) Sec. 79.

(2) See page 143 *ante*.

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papers, subsequent to the adoption of registration at full length, and the deposit of duplicates, should have been anticipated.

The Judge's certificate, which is not required to be under his private seal, or under the seal of the Court with which he is connected, should be either endorsed upon, or attached to, the instrument requiring re-registration. The certificate, as well as the instrument to be re-registered, must be produced to the Registrar, as the former is his warrant, as it were, for the re-registration of the latter. The Registrar cannot call for further proof of the execution and former registration of the instrument than the certificate of such former registration endorsed thereon (1). When re-registered, the instrument does not take priority from the date of such re-registration, but from the date of the original certificate of registration. As between two or more of such re-registered instruments, whose original certificates of registration should happen to be dated upon the same day, they will rank according to their respective registration numbers (2).

In its present shape, this section is comparatively of little practical value. A form of the Judge's certificate is contained in Appendix A.

(c) DEFECTS IN REGISTRATION CURED.

87. No registration of any deed or other instrument made before the fourth day of March, eighteen hundred and sixty-eight, shall be deemed or adjudged void by reason the name or names, residence or residences, addition or additions of the witness or witnesses to such deed or instrument being improperly given or described in the registered memorial thereof, or being either in part or altogether omitted from such memorial, or by reason of any clerical error or omission of a formal or technical character therein; and all registrations before the said day effected in separate Registry Books of unincorporated Villages,

Registration made before 4th March, 1868, not to be deemed void for certain defects.

(1) See notes to secs. 56 and 59 *ante*

(2) See pages 152-3 *ante*.

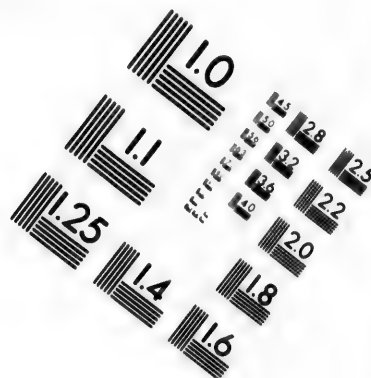
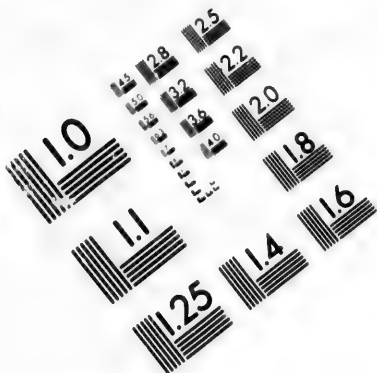
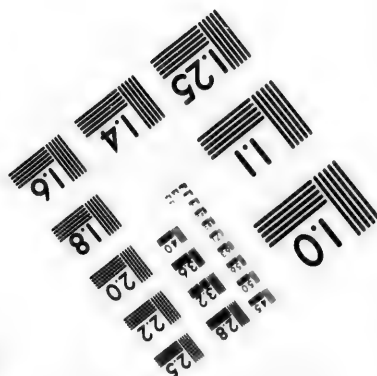
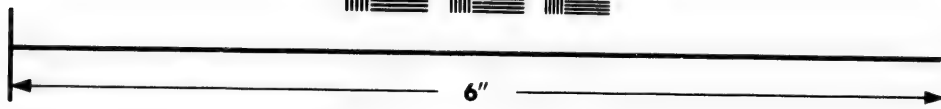
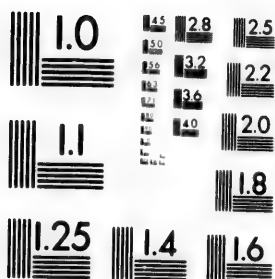


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are hereby confirmed, where the law has been otherwise complied with; and such separate Registry Books shall be taken and held to form part of the Registry Books of the Municipality of which such unincorporated Village forms a part; but such books shall not be further used. 31 V., c. 20, s. 80.

Registry
Act of
1846 im-
perative in
its re-
quire-
ments.

The Registry Act of 1846 enacted that, after any memorial had been registered, every deed or conveyance made of any lands comprised or contained in the prior registry should be adjudged fraudulent and void against any subsequent purchaser or mortgage for valuable consideration, unless a memorial of such deed or conveyance should be registered in the manner by that Act directed, before the registering of the memorial of the deed or conveyance, under which such subsequent purchaser or mortgagee should claim. The form and contents of memorials under that statute have already been referred to. The requirements of the Registry Act of 1846 were held to be imperative, and a strict accordance therewith was deemed essential to a proper registration. The language of the sixth section of that Act was interpreted strictly, both as regards form, as well as substance; and as making the registry of such a memorial as it directed, a condition precedent to the validity and effectual operation of the prior deed, as against a subsequent purchaser or encumbrancer. To place upon registry a memorial not in strict conformity with the provisions of that Act, was looked upon as a nugatory proceeding. In a case coming within the operation of that Act it was held, that a deed, registered upon a memorial which omitted the addition of the witness to the deed, was, on that account, fraudulent and void as against a subsequent mortgagee (1). The omission in the memorial of the christian name

(1) *Robson v. Waddell et al.*, 24 U. C. R., 574.

of the grantor's wife, who executed the deed for the purpose of barring her dower, was held to invalidate the registration (1).

The corresponding section of the Irish Registry Act (2) was declared to be mandatory, and not merely directory (3).

When the essentials to a proper registration were so rigidly construed, considerable anxiety prevailed in many cases respecting the validity of registration of muniments of title. To quiet these fears, as well to give a more liberal interpretation to the Registry Laws, advantage was taken of the amendment of those laws by the Registry Act of 1865, to introduce a provision to confirm all previous registrations which were defective in technical omissions or clerical errors. The seventy-eighth section of that statute is identical with the present section, having been retained in the Registry Act of 1868. Subsequent to the Registry Act of 1865 coming into effect it was held, that where the memorial of a will, registered on the twenty-ninth day of January, 1857, did not contain the place of abode or addition of the subscribing witness, such defects in the registration were cured by the seventy-eighth section of that statute, which had a retrospective effect (4). That section expressly exempted from its operation all suits then pending. But for this exception, the case of *Robson v. Waddell et al.* would have been determined differently, as judgment therein was deferred from time to time, in the expectation that the

(1) *Boucher v. Smith*, 9 Gr., 347; see *Bank of Montreal v. Thompson*, 9 Gr., 51; *McDonald v. Rodger*, *Id.* 75.

(2) 6 Anne, cap. 2, sec. 7.

(3) *Harding v. Carry*, 10 Ir. C. R., 140; in re *Monsell*, 2 Ir. Jur. (N. S.) 66; see *Sullivan v. Walsh*, 1 Jones, 264; in re *Jennings*, 8 Ir. Ch., 42.

(4) *Ryan v. Devereux*, 26 U. C. R., 100.

Registry Act of 1865 would contain some provision affecting the point under enquiry in that case.

Clerical
errors.

Clerical errors and omissions of a mere formal or technical character are relieved against in this section. It has always been generally held that registration will not be vitiated through a mere clerical error, or an omission of a formal nature (1). A mortgage and memorial thereof were executed on the twenty-sixth day of February, 1855. By a clerical error the date in the mortgage was written as 1851, but the memorial stated the date of the mortgage 1855. It was held that this error should be treated as a clerical error which did not invalidate the registration (2). If a clerical error, however, has a tendency to mislead, it may cause the registration to be invalidated. What will be

Formal
omissions.

considered as an omission of a purely formal nature must depend upon circumstances. Where the affidavit of the execution of an instrument did not state that the instrument was executed by the grantor, or person owning the subject matter of the conveyance, it was held, that such omission could not be treated as one of a formal nature only, but as one of substance, and that such omission was not cured by the remedial statute 27 & 28 Vic. (Imp.), cap. 76, which had been passed to relieve against certain defects in registration under the Irish Registry Act, and which is almost identical in its language with the section under discussion (3).

Retrospec-
tive effect
of section.

This section is applicable only to cases of defective registration, through *memorials* had prior to the passage of the Registry Act of 1868, and does

(1) *Wyatt v. Barwell*, 19 Ves., 435.

(2) *Harty v. Appleby*, 19 Gr., 205.

(3) *In re Stephen Estate*, 10 Ir. R. (Eq.), 282.

not affect registration through memorials subsequent to that date, and prior to the twenty-ninth day of March, 1873, which are within the operation of the following section.

The latter part of section eighty-seven refers to the registration of instruments affecting lands lying within unincorporated villages in separate Registry Books. Section 25, *supra*, and the corresponding section of previous Registry Acts made no provision for such separate Registry Books. Instruments affecting lands within such villages were required to be entered in the Registry Books for the municipality of which unincorporated villages formed a part. From a misapprehension of the law on this point, some Registrars had kept separate Registry Books for unincorporated villages, and had entered therein instruments affecting land lying within such villages. To remedy this state of things, the Registry Act of 1865 (1) confirmed all such registrations, provided that in all other respects the requirements of the Registry Laws had been complied with, and such separate Registry Books were taken and held to form part of the Registry Books of the municipality of which such unincorporated village formed a part. This provision was retained in the Registry Act of 1868 (2), which, however, added that such separate Registry Books should not be used after that Act came into effect (3).

Errors in
Register-
ing lands
in unin-
corporated
villages.

88. The registration of any instrument had before the twenty-ninth day of March, one thousand eight hundred and seventy-three, shall not be deemed void by reason of any defect in the proof for registration; but this section shall not apply to any matter or fact adjudged or decided upon before the said date by any Court of competent jurisdiction in that behalf. 36 V., c. 17, 1873, not s. 6.

Defective
registra-
tions be-
fore 29th
March,
1873, not
to be
deemed
void.

(1) Sec. 78.

(2) Sec. 80.

(3) See page 63., *ante*.

Remedial
effect of
section.

This section was introduced by the statute 36 Vic. cap., 17, sec. 6. It validates all defective registrations prior to the date referred to therein, whether made through memorials, duplicates or otherwise, except as to those matters theretofore judicially determined. It is essentially remedial in character, and, in accordance with the general rule, its language is to be construed largely and beneficially, so as to suppress the mischief and advance the remedy (1). Where a statute is remedial it is not unusual, in construing it, to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischief (2).

As to the effect of this section upon sections 78 and 79, see the notes thereon, *ante*.

Registra-
tions, &c.,
not to be
deemed
void by
absence of
certifi-
cates, &c.,
in margin
of books.

89. No registration or entry made before the said last mentioned date, shall be adjudged or held to be void by reason of the Registrar having failed or omitted to make or sign the certificate of entry, discharge, or registration, required to be made in the margin of, or elsewhere, in the Registry Books or other books of entries; and in case of such failure or omission, such certificate may be made or signed by any subsequent Registrar, and shall have the same force and effect as if it had been made or signed in margin by the Registrar whose duty it was to have made or signed it of books. 36 V., c. 17, s. 9.

Duties of
Registrar
as to reg-
istering.

The Registrar, upon the production to him of every original instrument, duplicate, or other original part thereof, accompanied by the affidavit of execution, is required by section fifty-nine, *ante*, to enter such instrument in the Registry Book, in its proper order, and by section sixty, *ante*, he must also make an entry in the margin of the Registry Book of the date and time of such registration. Under the sixty-seventh section he must, upon receiving a certificate of discharge of a regis-

(1) Dwaris on Statutes, 632.

(2) The Dean and Chapter of York v. Middleburgh, 2 Y. & J., p. 215. Per Alexander, L. C. B.

tered mortgage, make a marginal entry of such discharge in the Registry Book where the mortgage is registered. The plaintiff claimed lot 25, under a deed from the heirs-at-law of S., the patentee, executed in 1875. The defendants claimed under a deed from S., dated and registered in 1867, but the Registrar had omitted to enter the defendant's deed in the abstract index, and in consequence, when the plaintiff enquired at the Registry Office, before getting his deed from the heirs-at-law of the patentee, he was informed that the patentee had made no conveyance. It was held, that the Registrar's omission to make the entry in the abstract index did not invalidate the registration, or deprive the defendant's deed of its priority (1). In this case it was argued, on behalf of the plaintiff, that compliance with the twentieth section of the Registry Act of 1865, (corresponding with section *thirty-three, ante*), was essential to a valid registration, and that consequently the omission, on the part of the Registrar, to do what was required of him by that section, avoided the registry of the defendant's deed. This contention was over-ruled on the grounds that there was nothing in that section to compel the Court to give it so unreasonable and unjust a construction; that the duty of the Registrar to enter the deed in the Index Book was a subordinate duty, and that the non-performance of it could not deprive the defendant, who claimed under the deed, of any priority which he might otherwise be entitled to (2). A Registrar is a public officer, and as private persons, requiring his services, cannot control the performance or non-performance by

(1) *Lawrie v. Rathburn et al*, 33 U. C. R., 255.
(2) See cases cited on page 77, *ante*.

him of the official duties allotted, it would be opposed to every sense of justice and reason, to hold that they should be held responsible for his negligence or omission (3).

By the latter clause subsequent Registrars are authorized to correct or supply any failure or omission on the part of their predecessors in office to make the necessary entries. It should, however, be imperative instead of permissive.

The case of part of a Township made part of a new Township without change of registry books provided for.

90. In case a part or parts of any Township or Townships as originally laid out, surveyed and named, had before the said last mentioned date been made or erected into a new Township, but, nevertheless, the registrations of instruments affecting or respecting land in said first mentioned Township or Townships, and the Registry Books and Indexes therefor and relating thereto, continued to be and were on the said date used, made, kept, entered and registered for and of said first mentioned Township or Townships, and as if the same had continued to be as so originally laid out, surveyed and named, then and in every such case, and for and in respect to all matters and purposes either before or after the said date of or relating to any such instrument and any and all such registrations, Registry Books and Indexes, and the description therein of any land or premises, said first mentioned Township or Townships shall be deemed, considered and taken as if the same had continued to be and remained as so originally laid out, surveyed and named.

Proviso. 2. Nothing in this section contained shall be deemed or taken as relating to or affecting any incorporated Town or Village, or the land therein, or the registration of any instrument respecting the same, from or after the time of the incorporation of said Town or Village.

Proviso. 3. Nothing in this section contained shall impair or make defective any instrument or the registration thereof, because of any land being therein described or mentioned as situate in such new Township. 36 V., c. 17, s. 10.

By section twenty-five, *ante*, it is enacted that a separate Registry Book should be provided for each Township or reputed Township, etc. Section twenty-eight, *ante*, made provision for the separation or detachment of any Township, etc., from any county. The case of a part of a Township being made or erected into a new Township was not anticipated, and in some cases, from no special pro-

(3) See page 41, *ante*.

vision having been made, it was usual to enter instruments affecting land situate in such part of a Township in the Registry Books and Indexes belonging to the Township in which such part was situate, to the same extent as if the latter had not been made or erected into a new Township. To obviate any difficulties or complications which might arise out of such a practice, this section was introduced in 1873, by the Act 36 Vic., cap. 17, sec. 10.

LIST OF CROWN GRANTS TO BE FURNISHED TO REGISTRAR.

91. The Provincial Secretary shall once in every three months, Provincial furnish to each Registrar a statement containing a list of the Secretary names of all persons to whom patents have issued from the to furnish Crown for grants of land within the County since the former statement statements, and of all persons whose patents have been cancelled, of Crown since the former statements, and with such general or particular grants descriptions as the case may require; and the Commissioner of once every Crown Lands shall furnish copies of all plans or maps of Towns three and Townships within the same, which have not been already months. furnished, and in cases where no proper survey of any Town- Maps to be ship has been made he may cause a proper survey and plan thereof furnished by Com- to be made and furnished. 31 V., c. 20, s. 81; 40 V., c. 7, *Sched.* missioner of Crown Lands.

The Registry Act of 1846 required the officer performing the duties formerly assigned to the Surveyor General to furnish the Registrar with a list of the names, of all persons to whom patents had issued from the Crown for grants of land within his county, and also with copies of all plans or maps of Towns and Townships within the same. He was not required to furnish this information unless he was previously applied to in writing by the Registrar, and he had twelve months after such application within which to prepare the list, maps, etc. By the Act 16 Vic., cap. 159, sec. 24, the Commissioner of Crown Lands was required to Yearly transmit, once a year, to the Registrar of each state- county or registration district, a list of the Clergy ments.

and Crown Lands sold, or for which licenses for occupation had been granted, in such county or district; and he was further required to notify, in like manner, the Registrar of the cancellation of any patent of license or occupation.

Duties
transfer-
red to
Crown
Lands
Commis-
sioner.

By the Act 23 Vic., cap. 2, sec. 4, all the powers and duties which were, prior to March 17th, 1845, vested in the Surveyor General, were transferred to, and vested in, the Commissioner of Crown Lands.

State-
ments,
&c., to be
made
quarterly
by Provin-
cial Regis-
trar.

The Registry Act of 1865 (1), amending the Registry Law, provided that the Provincial Registrar should forthwith, after the first day of January, 1866, furnish to each Registrar, a statement containing a full description, by metes and bounds, of all lands theretofore granted by the Crown, when a general description could not be given, together with the names of the grantees, and he was required further to furnish such Registrar, every three months, with a similar statement of all subsequent grants. By the same section the Commissioner of Crown Lands was required to furnish copies of all maps and plans of Towns or Townships which had not already been furnished, prior to the first day of January, 1866. The Registry Act of 1866 transferred the duty of furnishing the statement of Crown Grants from the Provincial Registrar to the Provincial Secretary, and also required statements of cancellation of patents to be forwarded to the Registrar. This section is identical with section thirty-seven of "The Public Lands Act" (2). By the thirty-fifth section of that Act the Commissioner of Crown Lands is required to transmit to each Registrar, a list of Public Lands sold, granted,

Duty
transfer-
red to Pro-
vincial
Secretary.

Duty of
Crown
Lands
Commis-
sioner.

(1) Sec. 79.

(2) Rev. Stat. (Ont.), cap. 23.

licenses for
county or
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17th, 1845,
transferred
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the first day
of 1866 trans-
statement of
gistrar to the
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with section
Act" (2). By
the Commis-
o transmit to
sold, granted,

leased, appropriated or set apart to any person, or for which licenses of occupation have been issued, which lands are declared by that Act to be liable to the assessed taxes in the Township in which situate, and provision is made for the right of purchase thereof at tax sales. The copies of the plans and maps required to be furnished under this section to the Registrar, by the Commissioner of Crown Lands, are, by the forty-fifth section of "The Public Lands Act," declared to be competent evidence thereof in all cases in which the originals could be evidence, provided that such copies are attested under the signature of the Commissioner, or of the Assistant Commissioner. In an action for cutting timber on the plaintiff's land, the plaintiff adduced in evidence of his title a plan produced from the Registry Office, which plan was sworn to be the one furnished by the Commissioner of Crown Lands. It was headed "Cardiff," (the name of the township), and at the bottom was written "Department of Crown Lands, Ottawa, November, 1866, A. Russell, Assistant Commissioner," whose signature was proved. It was held, that the plan was sufficiently certified under this section, and consequently was receivable in evidence (1).

[Sections 80 and 81 of 29 V., C. 24, are as follows :—(2).

80. Any person forswearing himself before any Registrar or his Deputy, or before any Judge, Commissioner, or other person duly authorized to administer an oath in any of the cases aforesaid, and lawfully convicted, shall incur and be liable to the same penalties as if the oath had been taken in any Court of Record in Ontario.

81. Any person who forges or counterfeits any certificate of this Act authorized or directed, or any affidavit of the execution of any duplicate, original or memorial, or any instrument whatever mentioned in this Act, shall be deemed guilty of felony, and

False swearing under this Act to be perjury.

Forging certificates, &c., under this Act to be felony.

(1) Nicholson v. Page, 27 U. C. R., 318.
(2) See Registry Act 1868, sec. 82-83.

shall be imprisoned at hard labour in the Penitentiary, for any time not less than four years nor more than ten years.

Omitted
from Re-
vised Reg-
istry Act
as bearing
on crim-
inal law.

These penal clauses were included in the Registry Act of 1795, and every succeeding Registry Act. When the revision of the Statutes of Ontario was decided upon, the Commissioners eliminated from such revision all those statutes, or parts of statutes, which affected matters that were excluded from the jurisdiction of the Provincial Legislation by "The British North America Act." As a consequence, these sections are not contained in the revised Registry Laws, but, nevertheless, they are in force, and form part of the general criminal law of Canada. For the purpose of convenience, however, they are permitted to appear in this Act, but in a smaller type, to indicate that although inserted they do not form part of the revised Act.

CHAPTER XII.

FEEs OF REGISTRARS.

- §92. (1). Fees for registrations generally where instrument includes different lots, &c.
 (2). Searches as to title. General search.
 (3). Searching alphabetical index. General search.
 (4). Abstracts of title.
 (5). Certificates.
 (6). Filing plans.
 (7). Statements under secs. 28, 31 & 32.
 (8). Entering lots under sec. 35. Provis.
 (9). Affidavits.
 (10). Shewing originals.
 (11). Certificates of discharge, &c.
 (12). Certificates of payment of taxes.
 (13). Figures how charged.
- §93. Table of fees.
- §94. Registrars to give statement of fees payable in any matter.
- §95. Recovery of fees from Municipal Corporations evidence.
- §96. Fees payable before registration.
- §97. Registrars to keep accounts of fees. Return.
- §98. Registrars emolument when fees do not exceed \$2,500.
- §99. When fees are between \$2,500 and \$3,000.
- §100. When fees are between \$3,000 and \$3,500.
- §101. When fees are between \$3,500 and \$4,000.
- §102. When fees are between \$4,000 and \$4,500.
- §103. When fees exceed \$4,500.
- §104. Application of surplus fees.
- §105. Fees under ss. 28, 31 or 32, etc., not included in above provisions.

92. Every registrar shall be allowed the following fees for Fees. the following services, and no more.

•A registrar cannot sue for fees, where not ex- Action for. pressly provided for.

(1). For the necessary entries and certificate in registering For regis- every instrument other than those hereinafter specially provided trations for, including among such certificates the certificate on the generally. duplicate, if any, forty cents; and for registering every instru- ment, other than those hereinafter specially provided for, one dollar.

But in case the said instrument exceeds seven hundred words, then at the rate of fifteen cents for each additional one hundred words or the fractional part thereof, up to fourteen hundred

words, and at the rate of ten cents for each additional hundred words or fractional part thereof over fourteen hundred.

If the instrument includes different lots in different localities.

And if the memorial or other instrument embraces different lots or parcels of land, situate in different localities in the same county, the registration and copying of such, including all necessary entries and certificates thereof into the different Registry Books, shall be considered separate and distinct registrations of such instruments, but shall be charged for and paid at the rate of forty cents for the necessary entries and certificate, and for the said instrument, fifteen cents for every one hundred words or the fractional part thereof up to fourteen hundred, and of all over that at the rate of ten cents for each hundred words or fractional part thereof.

Former tariffs of fees.

Reg. Act of 1795.

Reg. Act of 1846.

16 Vic., c. 187.

The tariff of fees payable to Registrars has necessarily varied from time to time. Under the Registry Acts of 1795 and 1846, the Registrar was entitled to receive the sum of fifty cents for the first hundred words, and for every additional hundred words the sum of twenty cents (1).

By the Act 16 Vic., cap. 187, the Registrar was allowed one dollar and twenty-five cents for registering every deed, conveyance, will, power of attorney or agreement, including all necessary entries and certificates, wherever the same did not exceed eight hundred words, and in case of excess, the further sum of thirteen and one-third cents for every additional one hundred words. Where any instrument related to lands in several localities in the same county, only one memorial was required, which memorial was to be copied into the Registry Book for each of such different localities, to the same extent only as if a separate memorial had been furnished in relation to the lands situated within each different locality; and the Registrar was required to make the necessary entries and certificates accordingly. In counting folios to be charged for in such cases only one certificate of registry should be allowed, and no charge was to be made for the marginal certificates, notes, or

(1) See *Smith et al v. Ridout*, 5 U. C. R., 617.

references. The registration fee for a Sheriff's Deed was limited to seventy cents. In a case arising under that statute it was held that the Registrar was entitled to charge for only one registry of any document to be registered in one or more Township, provided that the number of words recorded in "counting folios" should not exceed eight hundred words, and that all in excess of that number should be charged for at thirteen and one-third cents per folio as allowed by that Act (1).

Since the passage of the Registry Act of 1865, ^{Reg. Act of 1865.} which effected important changes in the tariff of fees, as well as in the method of registration generally, the cases of *Smith et al v. Ridout* and *in re Lount*, will have no application. By that Act the Registrar was allowed one dollar for registering an instrument where it did not exceed seven hundred words. In case it exceeded that number, the sum of fifteen cents for each additional hundred words or fractional part thereof, was allowed up to fourteen hundred words, and the further sum of ten cents for each additional hundred words or fractional part thereof, over the fourteen hundred words. Where the memorial or other instrument included different lots in different localities in the same county, the registration and copying of such, including all necessary entries and certificates thereof into the different Registry Books, were to be considered as *separate and distinct registrations* of such instruments, to be charged for at the rate of fifteen cents for every hundred words or fractional part thereof. This tariff was retained in the Registry Act of 1868, and in addition thereto, ^{Reg. Act of 1868.} the sum of forty cents was allowed to the Registrar for the necessary entries and certificates in

(1) *In re Lount*, 11 U. C. P., 97.

registering every instrument (other than those hereinafter specially referred to), including among such certificates the certificate on the duplicate (if any).

Tabulated
statement
of fees
under sub-
section.

For the convenience of those desiring to register instruments affecting different lots or parcels of land, situate in different localities within the same county or registration division, as well as instruments requiring but one registration, a tabulated statement is inserted in Appendix C. The first column thereof has reference to the fee chargeable when but a single registration is required under the first and second clauses of this sub-section ; the remaining columns relate to the fees chargeable under the third clause. The table is calculated only for instruments up to twenty folios and not requiring registration in more than six separate Registry Books in the county or division. Where the instrument either exceeds twenty folios, or requires registration in more than six Registry Books, the additional fees can be easily calculated.

Fees for
registra-
tion under
certain
Statutes.

The registrar is entitled to the fees allowed by this Act for the registration of any instrument, except where the fees for registration under certain statutes are thereby expressly regulated. A list of statutes authorizing the registration of particular instruments is contained in appendix B. Where in such list no particular fee is mentioned, the fees allowed by this Act will be chargeable. Where under a special Act a Registrar is allowed a specific or stipulated sum for registering certain instruments mentioned in such Act, he is restricted to that sum, but if those instruments do not strictly comply with the statutory form required by such Act, and contain foreign matter, the registrar will

be entitled to charge full registration fees under this Act. By the Act 10 Vic., cap. 109, (incorporating the defendants), the registrar was entitled to receive only the sum of fifty cents from the defendants for registering deeds made to them in the form prescribed by that Act. In 1873 and 1874 the defendants brought for registry, deeds made to them under that Act, but which contained, in addition, covenants for title not included in the statutory form. It was held that for such deeds the Registrar was entitled to charge his full fees under the Registry Act 1868, and was not restricted to the fifty cents (1).

(2.) For searching the Registry Books and Indexes relating to the title of any lot or part of a lot of land as originally patented by the Crown, or as afterwards subdivided into smaller lots, as to title, shown by any registered map or plan thereof, when not exceeding four references, twenty-five cents, and five cents for every additional reference; but in no case shall a general search into the General title to any particular lot, piece or parcel of land exceed the sum search of two dollars.

Under section twenty-three *ante*, the Registrar, Duties of Registrar under sec. 23 *ante* when required, and upon being tendered his legal fees in that behalf, is obliged to make searches of all registered instruments affecting any patented lot, etc. If the party searching desires a personal inspection of the books of the office in order to search therein for himself, the Registrar must exhibit to him the requisite books, as well as the original registered instruments, the fees payable to the Registrar for the performance of these duties being established by this sub-section; and the Registrar is equally entitled to such fees whether he, or the party desiring a personal inspection of the books, makes the searches. In either case the search is restricted to the title of a lot of land, or of a part thereof, as originally patented by the crown, or as

(1). Ward v. Midland Railway of Canada, 35 U. C. R., 190.

subsequently divided according to a registered plan or not, shewing such sub-division (1).

Fees
under sub-
scriber
based on
number of
"refer-
ences."

Not on
number
of entries.

Fee for in-
spection of
Abstract
Index
only.

Disburse-
ments for
searches,
&c., allow-
ed in
actions, &c.

The amount of fees to which the Registrar is entitled under this sub-section is based upon the number of entries in the books. Where the Abstract Index of a certain lot containing thirty-one entries was shewn to an applicant who looked at the same, and who, at his request, was shewn four of the registrations in it, it was held, that the Registrar was entitled to charge only twenty-five cents, being his fee for searching not exceeding four references; and not the sum of one dollar and sixty-cents as for a search on each of such thirty-one entries (2). An applicant has the right to inspect the Abstract Index, and "may select as many references to be examined as he may please, and on his selection and requirement depend the amount of the fees" (3). Where the applicant simply inspects the Abstract Index and does not ask for references to registered instruments the Registrar will be entitled to charge twenty-five cents for exhibiting the Abstract Index (4).

The total charges for a search are limited to the sum of two dollars.

Disbursements for necessary searches in the Registry Office in connection with any action, suit, matter or other legal proceeding are usually allowed to the successful party. In taxing the costs of an action of ejectment for non-payment of rent, the plaintiff will be allowed the cost of searches made in the Registry Office against both names and lands for the purpose of proceeding in such action (5).

(1) *Hope v. Ferguson*, 17 U. C. R., 219.

(2) *Ross v. McLay*, 26 U. C. P., 190.

(3) *Ib.*, per Hagarty, C. J.

(4) *Ib.*

(5) *Jack v. Lawder*, 3 Ir. L. R., 531.

(3.) For searching, if specially required, the Alphabetical Searching Index of names referred to in section thirty-four as to each name Alphabetical in the books of any one Township, or other legally defined local Index. Municipality in the County, twenty-five cents; but if a general search as to any such name is made throughout the County, General the aggregate of fees for such search shall not exceed one dollar; search.

See notes to section thirty-four *ante*.

In order to entitle the Registrar to the fees hereby prescribed, he must, previous to searching the Alphabetical Index, be specially required in that behalf by the party chargeable. Upon being so specially required he is entitled to the fee of twenty-five cents for searching each name, whether the same appears as "grantor" or "grantee," in the Books of any one Township, City, Town or incorporated Village in the County. Where he is requested to extend such search in the Books of more than one Township, etc. in his County, he will be entitled to a further fee of twenty-five cents for each additional Township, etc., not to exceed, however, in the aggregate, one dollar for each name.

Registrars
must be
"specially
required."

(4.) For every abstract of title to any specific parcel of land certified by the Registrar, containing such particulars as to any number of the registered instruments affecting such parcel of land as the party searching may require, twenty-five cents; and when such abstract exceeds one hundred words, fifteen cents for every additional hundred words; and for copies of instruments when required, ten cents for each hundred words;

Abstracts
of title.

This sub-section ascertains the fees payable to the Registrar for making and furnishing an abstract of title as required by section twenty-three *ante*.

The abstract must relate to the title of a "specific parcel of land." Where a Township lot has been originally granted by the Crown in halves, or in other portions, and the title to the portion patented has continued separate, the Registrar must, on application, furnish an abstract of the registered instruments relating to such portion.

"Specific
parcel of
land."

He cannot be required to furnish, nor can he charge for, extracts of conveyances relating solely to any other portion (1).

Abstract
must be
certified.

The abstract must be certified by the Registrar or his Deputy, and the certificate should be clear and absolute in its terms. A certificate to an abstract of title being in the following words, namely: "I hereby certify that the above conveyances appear of record," it was held that the abstract did not comply with the statute, inasmuch as it was not certified to as the abstract of all the registries which were on record in the Registry Office upon the lot referred to (2).

Not evi-
dence of
title.

A certificate purporting to shew the registered conveyances of land from the County Registrar's Office under the hand of the Deputy Registrar was held not to be admissible evidence of title under the Act 13 & 14 Vic., cap. 19, sec. 4 (3).

As to omissions in certificates see cases cited page 55 *ante*.

No charge can be made for certificates given under this sub-section (4).

Form of
certificate.

Contents
of Ab-
stract.

For form of certificate to abstract see Appendix A. The abstract must contain "such particulars" relative to the registered instruments as the applicant may require. This expression is somewhat indefinite. The meaning of it is doubtless that the contents of the registered instruments and the entries in connection therewith shall be set out with more or less detail as the applicant may wish. When the abstract is a mere transcript of the Abstract Index the slightest possible information is conveyed to the applicant. If an abstract,

- (1) *Hope v. Ferguson*, 17 U. C. R., 219.
- (2) *In re Registrar of Carleton*, 12 U. C. P., 225.
- (3) *Gamble v. McKay*, 7 U. C. P., 319.
- (4) See next sub-section.

however, is meagre in its details, the fault will be at the door of the applicant, as he will be entitled to have the abstract contain "such particulars as he may reasonably desire."

Under the Act 16 Vic., cap. 187, sec. 8, which ^{Fees under Act 16 Vic., cap. 187.} allowed the Registrar twenty-five cents for every abstract furnished by him, including his certificate, where the same did not exceed one hundred words, and fifteen cents for every additional one hundred words, it was held, that the Registrar could charge only those fees, and could not charge twenty-five cents for each memorial, treating such memorial as a separate extract and certificate (1).

Where an abstract of title to a lot is applied for, ^{Fees where abstract is only copy of Abstract Index.} and the Registrar furnishes only a copy of the Abstract Index, making no search, or reference to the registrations, he will be entitled to charge only for such copy, namely, twenty-five cents for the first hundred words (2), and fifteen cents for each additional hundred words.

It is clearly the Registrar's duty, when called ^{Where searches are made.} upon to furnish an abstract of title to a lot, to make the proper and necessary searches and references to all the registered instruments in his office affecting the title of the lot in question; and whether the entries of such registered instruments appear in the Indexes, or not. He should be constrained to adopt this course from a sense of self protection. He will not, however, be entitled to charge for such searches and references as if made under the second sub-section of this section, in addition to the fees allowed him by the sub-section under remark. The Legislature, anticipating that

(1) Hope v. Ferguson, 17 U. C. R., 219; approved McDonald v. Bell, 21 U. C. R., 33.

(2) Ross v. McLay, 26, U. C. P., 190.

the Registrar, in preparing an abstract of title, would necessarily require to make proper searches, provided what they have deemed a sufficient compensation for making those searches, by allowing him twenty-five cents for the first folio of one hundred words, and fifteen cents for every additional folio. This intention on the part of the Legislature is rendered apparent when it is observed that they have fixed the fee for certified copies of registered instruments at ten cents only per folio, notwithstanding they must have been aware that the Registrar would be obliged to make a search for the registered instrument of which a certified copy may be required.

Certified
copies.

The fee to the Registrar for certified copies of instruments when required, including certificates, is ten cents per folio of one hundred words.

Certifi-
cates.

(5.) For each certificate furnished by the Registrar, except those made under sub-sections one and four of this section, twenty five cents.

In a case arising under the Registry Act of 1846, it was held that the Registrar had no right to charge a fee for the certificate which he was required to enter on the margin of the memorial (1).

Filing
plans.

(6.) For registration of any plan of Town or village lots, including all necessary entries connected therewith, one dollar ;

Inconsist-
ent lan-
guage of
Rev. Stat.
(Ont.) cap.
146, sec.
74.

Under the Act respecting Surveys of Lands (2), the Registrar is allowed to charge the same fees for the registration of a map or plan deposited with him under that statute as he would be entitled to receive in the case of other documents. The provisions of that statute for the registration of maps and plans are identical with sections eighty-two and the three following sections of this

(1) *Keele v. Ridout*, 5 U. C. R., 240.

(2) Rev. Stat. (Ont.) cap. 146, sec 74.

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Act, being adopted from the same source (1), and section seventy-four of the first mentioned statute is taken from the ninety-fourth of the Con. Stat. (Canada) cap. 77, and the forty-second section of the Con. Stat. U. C. cap. 93.

Section seventy-four of the Act referred to is in-
consistent with the language of this section, and
appears to have been unintentionally retained
when that Act was revised. It is submitted that
it is virtually superseded by this sub-section, and
that the fee of one dollar only can be charged
upon the registration of any plan or map.

Superseded
by this
sub-sec-
tion.

(7) For furnishing the statement and copies required under
the twenty-eighth, thirty-first and thirty-second sections of this Act,
to be paid by the County Treasurer, to which any city, town, town-
ship, village or place belongs or is attached, the sum of ten cents
for every folio of one hundred words contained in such statement
so furnished or copy so made; and the County Treasurer shall
also pay such sum as the Inspector may order in writing, spec-
ifying the nature of the service under any section of this Act, for
repairing any book, or copying, mounting, or binding plans under
the provisions of section thirty-two of this Act; and towns sepa-
rated from counties from municipal purposes, and cities in
which no separate Registry Office exists shall bear a rateable
proportion of the expense thereof based on the assessment of all
the municipalities within the jurisdiction of such county;

State-
ments un-
der secs.
28, 31 &
32.

The nature of the statement and copies here
referred to is fully set out in the twenty-eighth,
thirty-first and thirty-second sections *ante*, and the
remarks thereupon. As the fees chargeable for
providing such statement and copies are regulated
by the number of folios contained therein, their
amount can be easily ascertained. Where an ex-
penditure is incurred for the repair of books or
copying, mounting or binding plans and maps and
where compensation is due for any other services
under this Act for which expenditure and compen-
sation a Municipality would be liable, it is a con-
dition precedent to such liability that the amount

Nature of
state-
ments, &c.

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County's
liability.

(1) 31 Vic., cap. 20; 35 Vic., cap. 29; 39 Vic., cap. 7.

of the same should be previously ascertained by the Inspector, who is to order in writing the payment of such expenditure or compensation.

Entering lots under sec. 85. (8.) For entering under each lot the registrations made before the first day of January, one thousand eight hundred and sixty-six, the sum of ten cents for the several entries and reference of each instrument so entered, to be paid for in the same manner as provided for in the next preceding sub-section; but no fees shall be chargeable in respect of the Alphabetical Index, and in no case shall the fees chargeable in respect of the Alphabetical Index for any County, exceed in the whole the sum of two thousand dollars. 31 Vic., c. 20, s. 70 (1-8).

Proviso.

Sub-section is practically unimportant. As the duties required by section thirty-five, *ante* must, ere this, have been performed, this sub-section is of very little practical importance. No fees are chargeable for work done under that section, so far as relates to the entries in the Alphabetical Index, while services for entries and references in the Abstract Index are entitled to be compensated for at the rate of ten cents for each instrument so entered, which fee is payable by the County Treasurer.

Affidavits. (9.) For drawing each affidavit and swearing the deponent thereto, twenty-five cents; the same fee to be allowed for administering the oath when such only is required;

Former fee. The fee for taking affidavits under the Con. Stat., U. C., cap. 89, was fifty cents, which was reduced to the present sum by the Registry Act of 1865.

Showing originals. (10.) For exhibiting in the office each original registered instrument, including search for same, ten cents;

Applicant should give sufficient description. Amongst the other duties assigned to the Registrar by section twenty-three *ante*, is that of exhibiting an original registered instrument, when a party, desiring to make a personal inspection thereof, requires the Registrar to produce the instrument and tenders him the legal fees. This sub-section fixes the fee for exhibiting the original registered instrument including the search there-

for at ten cents. The party applying to the Registrar to inspect such original registered instrument should furnish the Registrar with a reasonably definite and clear description thereof, as will enable the latter to find it without difficulty.

It is not necessary that the registration number of the instrument should be stated by the applicant; it will be sufficient if the names of the parties and lot are furnished. In a late case, where the applicant,

on applying at a Registry Office to see an original registered deed, and having given the names of the parties to the deed and the lot described was shewn the original registered deed, it was held

that there was a sufficient description given to enable the Registrar to find the required deed, without also giving the number of the registration (1). It was contended in that case, on the part of the Registrar, that a search in a Registry Office must be presumed to be a search for title, and that the original could only be seen as incidental to such search. That, therefore, it was necessary to make a search under sub-section 2 *ante*, for which a charge of twenty-five cents could be made, and for exhibiting the original an additional fee of ten cents could be charged. It was also contended that the Registrar was compelled to search the Abstract Index, as the plaintiff did not give him the number of the instrument.

Also lot.

It has been doubted whether the words "original registered instrument" include a registered map or plan (2).

It is submitted that, for the purposes of this sub-section, as well as for other purposes, a registered map or plan is an "original registered

(1) *Ross v. McLay*, 26 U. C. P., 190.

(2) *Lindsey v. Corporation of Toronto*, 25 U. C. P., 335.

Registered
map af-
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cannot
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instrument." Although no specific allusion to maps or plans is made in section two of this Act in interpreting the meaning of the word "instrument," yet they are undoubtedly included in such definition by the concluding words of the first subsection of that section, namely "every other instrument whereby lands or real estate may be transferred, disposed of, charged, encumbered, or affected, *in any wise*, in Law or in Equity, affecting land in Ontario." The registration of a map or plan shewing streets, squares, etc., amounts to a transfer of the land covered by such streets, squares, etc., to the public by way of dedication (1). The registration of a map or plan also affects the land contained therein, inasmuch as instruments affecting such land, or any part thereof, executed after such registration cannot be registered unless they conform thereto. Should a map or plan be not considered to be an instrument, the Registrar cannot legally charge for either searching for, or exhibiting, it. Assuming the map or plan to be an original registered instrument, the Registrar is restricted to charging the fee of ten cents for exhibiting it, including the search for it, without regard to the number of lots contained in, or delineated upon, such map or plan. The plans filed in the Registry Office for the City of Toronto were exhibited to two assessors of the city assessment department, who made use of the plans in order to check, for assessment purposes, the dimensions of the various lots thereon or therein. The Registrar contended that he was entitled to a separate fee for a search on each lot shewn on the plan, and having brought an action therefor against the City of Toronto, it was held, and on appeal,

(1) See notes to section 84 *ante*.

affirmed, (Strong J. dissenting,) that the language of this sub-section was plain, and that the Registrar was not entitled to charge as for a search on each lot as shewn on such plans, and could not receive more than ten cents for exhibiting such plan as that charge had not been objected to by the defendants (1).

(11.) For registering each certificate of payment of mortgage Certifi- money, and every other certificate, excepting certificates provided cates of for in the next succeeding sub-section, including all entries and discharge, certificates thereof, fifty cents;

The language of this sub-section is clear and distinct, inasmuch as the only exception to the general fee for registration of certificates of what- ever nature or character is contained in the next sub-section.

(12.) For registering each certificate of payment of taxes, Of pay- ment of taxes. twenty-five cents;

See remarks upon section two of this Act, at pages 14-15 *ante*. A form of certificate is contained in Appendix A.

(13.) In abstracts and certificates where figures are used in- Figures, stead of words to denote dates, numbers and quantities, the how same shall be charged as if each number, though composed of charged. several figures, was but one word. 31 Vic., c. 20, s. 70, (10-15.)

The word "number" in the third line of this sub-section is used in the sense of "an aggregate Meaning of word "num- or assemblage of units," and not simply as a digit. ber." For example, in counting folios, 750 will rank only as one word, notwithstanding that they represent four words if written out in full. Where there are several "numbers" each "number" is to be charged for as one word; e. g. the words "January 10th, 1880," would be charged as three words.

For statement of fees for registering documents under other Statutes see Appendix C.

(1) *Lindsey v. Corporation of Toronto supra*.

Table of fees. 93. Each Registrar shall keep posted up in some conspicuous place in his office a printed schedule of the fees, and charged authorized under this Act. 31 Vic., c. 20, s. 70 (10-15.)

For use of the public. A similar provision exists in "The Division Courts Act" (1) by which Clerks of Division Courts are required to keep posted up in their offices a table of the fees to which they are entitled under that Act. The general public are thus enabled to ascertain, with some degree of accuracy, the amount of fees which they may be called upon to pay.

Registrar to give statements of fees payable in any matter. 94. Every Registrar shall, upon request of the person for whom the service is performed, furnish a statement in detail of the fees charged by him in respect of any matter for which fees are payable under the provisions of this Act. 38 Vic., cap. 17, s. 7.

Neglect to give statement. This section was introduced by the Act 38 Vic., cap. 17, sec. 7, and was designed to afford additional protection to those persons requiring the services of the Registrar. Should a Registrar neglect or refuse to furnish to the applicant a statement in detail under this section of the fees charged by him against such applicant, the latter may bring an action against the Registrar for such neglect and refusal, claiming a mandamus, and the Registrar will not be entitled to notice of action as such neglect and refusal are acts of omission (2).

Request should be in writing. It is not essential to the right of the applicant that his request should be in writing, a verbal application being sufficient. For the purpose of preserving evidence of such request, however, it is more prudent that it should be in writing, and a form thereof is contained in Appendix "A."

Recovery of fees from municipal corporations. 95. Should the Treasurer of any County or City in which a separate Registry Office is established, on the request of the Registrar for the duties performed according to this Act, refuse to pay the fees and allowances for any services required by this

(1) Rev. Stat. (Ont.) cap. 47, sec. 48.

(2) *Ross v. McLay*, 40 U. C. R., 83; see page 42 *ante*.

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Act, such Registrar may prove and recover the same and the costs thereof from the Corporation of the County or City in any Court of Record in Ontario; and the Inspector's certificate of the amount and of the services rendered shall be *prima facie* evidence of the right to recover. 31 V., c. 20, s. 72.

Sections twenty-eight, thirty-one and thirty-two *ante*, require the Registrar to perform certain duties therein set forth, which services are, by the terms of section ninety-two, sub-section seven *ante*, to be paid for by the Treasurer of the proper County or City. In the event of neglect or refusal by such Treasurer to pay the proper fees and allowances, this section enables the Registrar to enforce such payment, by giving him a right of action therefor, against the Corporation of such County or City. It also facilitates the recovery of such fees and allowances and costs of suit, by declaring that the certificate of the Inspector, certifying to the amount of the fees, which he claims to be entitled to, and to the character of the services rendered by him, shall be *prima facie* evidence of his right to recover.

Object of
sub-sec-
tion.

It has been held that the authority conferred by this section upon the Inspector to certify as to the amount due to, and of the nature of the services rendered by the Registrar makes the general averment in the declaration of services rendered sufficient (1). "He is, as it were, the taxing officer, on whom is cast the duty of fixing the amount, and scrutinizing the items" (2).

Effect of
Inspect-
or's certifi-
cate.

Where the witness proved that he went with an order from the plaintiff to the Treasurer of the defendants, and spoke to a person he supposed was the Treasurer, who referred him to the Warden, who referred him to their legal advisers, by

Proof of
demand
and re-
fusal.

- (1) Campbell v. Corporation of York and Peel, 26 U. C. R., 635.
- (2) *Ib.* per Hagarty J. at page 641.

one of whom he was told that one of the defendants did not intend to pay the account at all, it was held that a demand of payment on the Treasurer of the defendants, and a refusal by him, were sufficiently proved (1). In this case it was also held, that the Inspector's certificate, though given after the defendants had separated, was sufficient, it not being a condition precedent to the plaintiff's right of action on such refusal. It was also held, to be no objection to the plaintiff's right to recover that a portion of the work had been performed by his predecessor.

Request
should be
in writing.

Although the request to the Treasurer is not required to be in writing, it is more prudent that it should be so, in order to preserve evidence thereof. A form of such request is given in Appendix A.

Fees payable before registration.

96. The Registrar shall not be compelled to register any instrument unless the fees authorized by this Act are first paid thereon. 31 V., c. 20, s. 73.

Registrar may waive prepayment of fees.

This section was framed for the protection of the Registrar, inasmuch as it ensures the due payment of his lawful fees. He is at liberty, of course, to waive the advantage which this section was designed to confer upon him, and may, if so disposed, register any instrument presented to him for registration, without requiring pre-payment of his fees. Should he do so he will not have any lien for such registration fees upon a duplicate original of such instrument, or any other document which the party registering is entitled to have returned to him, nor can the Registrar refuse to deliver up the same. If the Registrar accepts an instrument presented to him for registration, and undertakes to register the same without the fees therefor be-

Has no lien for fees.

(1) S., c. 27 U. C. R., 138.

ing prepaid, it being agreed, or understood, that such fees shall be charged against the party registering the instrument, he cannot afterwards refuse to register the same, or to return the duplicate original to such party on the ground of such non-payment of fees. Should he decline to deliver up such duplicate original or other document, upon the ground that the registration fees thereon have not been paid, he may be compelled to do so through a mandamus (1). In an action brought against the defendants, as solicitors, for neglect to register a certain mortgage on behalf of the plaintiff, the defendants pleaded that the Registrar was by law entitled to certain fees before registering an instrument, as the plaintiff well knew, and that the plaintiff never furnished the defendants with any money to pay the same, "and so the defendants say that the said mortgage was not registered by the Registrar, or by the defendants, for the default of the plaintiff in not providing the defendants or said Registrar with any money to pay to the said Registrar the fees allowed to him by law for registering the said mortgage." This plea was demurred to as substantially no defence to the action, and as not averring any notice or request to the plaintiffs to provide money for the fees, or that defendants would not register the mortgage and payment to them of the Registrar's fees. It was held by McLean, C. J., that the second plea was bad, for a retainer being admitted, the plaintiffs' omission to furnish money formed no excuse, without notice to him that it was required, which defendants should have averred; but per Hagarty, J., that the plea having averred that the non-registration was caused by the plaintiffs' neglect

Compelled
to deliver
up instru-
ments, &c.

Lynch
v. Wilson
et al.

(1) *Doutre v. Gagnon*, 13 L. C. J., 303.

to furnish fees which he knew were necessary, could not therefor be held bad. As Burns, J. was absent, and the Court was thus equally divided, no judgment was given on the demurrer (1).

Registrars
to keep
accounts
of fees.

Return.

97. Every Registrar shall keep a separate book in which he shall enter, from day to day, all fees and emoluments received by him by virtue of his office, shewing separately the sums received for registering each instrument, and for searches, and for extracts or copies, and shall make, up to and including the thirty-first day of December of the previous year, a return, under oath, of such fees and emoluments so received to the Lieutenant-Governor, annually on the fifteenth day of January. 31 V., c. 20, s. 74.

This duty was originally imposed upon Registrars by the Act 16 Vic., cap. 187 (2), which required him to keep accounts of fees and emoluments received by him by virtue of his office, and to make an annual return of such fees and emoluments in detail to the Legislature. By the Registry Act of 1865 (3) the return was to be made to the Governor-General on the fifteenth day of January in each year, and was to be under oath. The Lieutenant-Governor was substituted for the Governor-General by the Registry Act of 1868 (4). By the Act 43 Vic., c. 3, s. 2, which came into force on and after the first day of January, 1881, the Registrar will have to include in his return (*a*) the aggregate amount of the fees and emoluments earned by him during the preceeding year, by virtue of his office (*b*), the aggregate amount of all fees and emoluments actually received by him during the preceeding year (*c*), the actual amount of the disbursements during the same period in connection with his office.

(1) *Lynch et al v. Wilson et al*, 22 U. C. R., 226. See also cases cited on p. 263 *ante*, notes (4) and (6).

(2) Sec. 9.

(3) Sec. 72.

(4) Sec. 74.

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98. Each Registrar shall be entitled to retain to his own use in each year all the fees and emoluments received by him in that year up to two thousand five hundred dollars. 35 V., c. 27, s. 1.

99. Of the further fees and emoluments received by each Registrar in each year, in excess of two thousand five hundred dollars, not exceeding three thousand dollars, he shall be entitled to his own use ninety per cent. and no more. 35 V., c. 27, s. 2.

100. Of the further fees and emoluments received by each Registrar in each year, in excess of three thousand dollars, not exceeding three thousand five hundred dollars, he shall be entitled to retain to his own use eighty per cent. and no more. 35 Vic., c. 27, s. 3.

101. Of the further fees and emoluments received by each Registrar in each year, in excess of three thousand five hundred dollars, he shall be entitled to retain to his own use seventy per cent. and no more. 35 V., c. 27, s. 4.

102. Of the further fees and emoluments received by each Registrar in each year, in excess of four thousand dollars, not exceeding four thousand five hundred dollars, he shall be entitled to retain to his own use sixty per cent. and no more. 35 V., c. 27, s. 5.

103. Of the further fees and emoluments received by each Registrar in each year in excess of four thousand five hundred dollars, he shall be entitled to retain to his own use fifty per cent. and no more. 35 Vic., c. 27, s. 6.

104. On the fifteenth day of January in each year each Registrar shall transmit to the Treasurer of the County or City for which, or for a Riding of which, he is Registrar, a duplicate of the return required by this Act, and shall also pay to such Treasurer for the use of the Municipality such proportion of the fees and emoluments received by him during the preceeding year, as under this Act he is not entitled to retain to his own use.

2. Where the County or Riding includes a City or Town separated from the County for municipal purposes the amount aforesaid shall be paid to the Treasurer of the County and to the Treasurer of the City or Town for the uses of the Municipality, in the same proportions in which the gross fees and emoluments are derived from extracts, searches, registrations, and other charges in respect of lands situate in the County, and in respect of lands situate in the City or Town. 35 V., c. 27, s. 7.

105. In the fees and emoluments mentioned in the seven next preceeding sections of this Act, shall not be included any sums recoverable from the Municipality for the preparation of Abstract Indexes, or for work done under the twelfth, thirteenth, thirty-first or thirty-second sections of this Act. 35 V., c. 27, s. 8.

Public attention having been attracted to the fact that in many Registry Offices, the number of

Registrar's emolument do not exceed \$2,500. When fees are between \$2,500 and \$3,000. When fees are between \$3,000 and \$3,500. When fees are between \$3,500 and \$4,000. When fees are between \$4,000 and \$4,500. When fees exceed \$4,500. Application of surplus fees. Fees under ss. 28, 31, or 32, etc., not included in above provisions. Increase of fees, &c.

registrations, extracts, searches, etc., had increased to such an extent that the income and emoluments derived therefrom by the Registrars became excessive, in proportion to the nature of the duties appertaining to their offices, it was deemed necessary to amend the Registry Act in respect to the fees of office to be retained by the Registrar, by appropriating certain proportions of the fees received by him, over and above certain amounts, to the use and benefit of the County or City, as the case might be, for which, or for a Riding, of which he is Registrar. The Act 35 Vic., c. 27, was accordingly passed, and the possessions of that statute are incorporated in sections 98-105 *supra*. By this change, while the Registrar is allowed to retain a sufficient proportion of fees and emoluments for his private benefit, the County or City is entitled to share in, and reap a proportionate benefit from, the advantages which an increase in transfer of real estate usually confers.

Fees to be paid over. The Registrar is required, annually, on the 15th day of January, to pay over to the Treasurer of the County or City, for its use and benefit, the surplus of fees to which it is entitled under these sections, together with a duplicate of the return referred to in section ninety-seven *ante*. An action having been brought by the plaintiff to recover from the defendant, who was Registrar of the County of Hastings, the surplus fees mentioned in the above sections, the defendant demurred to the declaration, on the ground that the above sections were *ultra vires* of the Local Legislature, as it imposed an indirect tax, and not a tax for raising a revenue for provincial purposes. It was held, affirming the judgment of Armour J., that if a tax at all, it was clearly a direct tax, and within

Liable to action therefor.

the legislative jurisdiction of the Province. And further, that having received the money in question, under this Act, the defendant could not deny that he received it for the purpose therein indicated (1).

(1) *The County of Hastings v. Ponton*, 5 App. R., 543.

CHAPTER XIII.

INSPECTOR OF REGISTRY OFFICES.

§106. Appointment of Inspector, and his duties.

- (1). Inspection of Building.
- (2). Books, etc.
- (3). Office hours.
- (4). Seals of Office.
- (5). New Indexes.
- (6). Plans.
- (7). Reporting vacancies.
- (8). Instruction of Registrar in his duties.
- (9). Sufficiency or insufficiency of sureties.
- (10). Reporting to Lieutenant-Governor.

§107. Pay of Inspector.

§108. Act not to be used to construe other Statutes.

Appoint-
ment of
Inspector,
and his
duties.
Import-
ance of
appoint-
ment.

106. The Lieutenant-Governor may, from time to time, appoint an Inspector of Registry Offices, whose duty shall be,

The importance of an enactment, such as this statute, which so intimately and seriously affects public and private interests, being administered in an efficient, uniform and satisfactory manner cannot be too highly overrated. The want of some adequate supervision in the administration of the Registry laws was long felt and acknowledged, but no decisive step in this direction was adopted, until provision was made by the Registry Act of 1865 (1), for the appointment of an officer, whose duty it would be to personally superintend the working of the Act, and to direct and instruct, if necessary, Registrars in the proper discharge of their duties.

Satisfac-
tory result
of system
of inspec-
tion.

The efficient and satisfactory working of the Registry Act since the introduction of this system of supervision is the best testimony of its practical

utility. Previous to its adoption frequently the only method of obtaining the solution of a difference between the Registrar and the public, as to a point of practice or detail, was through the medium of the Law Courts.

Although the duties of the Inspector are enumerated below, there are other obligations imposed upon him, which are referred to in various parts of the Act. Other duties of Inspector.

(1) To make a personal inspection of the building in which each office is kept, and of the books, deeds, memorials and other of building instruments in each Registry Office ;

By section five *ante*, the building in which a Registry Office is to be kept, is required to be erected upon plans approved of by the Lieutenant-Governor in Council. The object of requiring the Inspector to personally inspect the building is not only to ascertain that it is in accordance with the approved plan, but also that it is kept in a fit and proper state. A personal inspection of the books and registered instruments will enable the Inspector to see that they conform to the requirements of the Act, and are properly framed and taken care of.

(2) To see that the proper books are provided, that they are in good order and condition, that the proper entries and registrations are made therein in a proper manner and in a due and proper form and order, that the Indexes are properly kept, and that all the memorials and other instruments are duly endorsed and certified and preserved Books, etc.

The "proper books," here alluded to, refer not only to those mentioned in this Act, but also to all other books which the Registrar is required to supply himself with, under various other statutes (1).

(3) To ascertain that the office is kept duly open at and for the proper times, and that it is at all times duly attended to by the Registrar or his deputy ;

(1) See Appendix B. ; also page 66 *ante*.

Attend-
ance dur-
ing office
hours.

The hours of attendance by the Registrar, or his Deputy, at the Registry Office are regulated by section twenty-two *ante*, and this sub-section requires the Inspector to see that these hours are faithfully adhered to. The Registrar or his Deputy has no right to close the office, or to leave it unattended to, during any portion of the regular office hours; on the contrary, they are expressly required to attend there during such hours. A breach of this duty will render him liable to an action on the part of any person who may sustain loss or damage thereby.

Seals of
office.

(4.) To settle on some uniform device for the official seals, and to see that the Registrars supply themselves therewith;

Regis-
trar's
must pro-
vide them-
selves
with seals.

By section twenty-four *ante*, each Registrar is obliged to have a seal of office of a device approved of by the Inspector. The duty of settling on some uniform device for such seals is here required of the Inspector, who must, in addition, see that each Registrar supplies himself therewith. As no provision is made to meet the cost of providing the Registrars with official seals, each Registrar must supply himself at his own expense.

New In-
dexes.

(5.) To inspect all new Abstract and Alphabetical Indexes and to settle and certify the sums, if any, chargeable therefor;

Whenever a Registrar requires a new Registry Book, or any other Book for the use of his office, the City or County Treasurer, as the case may be, is required by section twenty-five *ante*, to furnish the same to the Registrar on the latter applying in writing to him therefor. The sums chargeable for such indexes, etc., are to be settled and certified to by the Inspector. That portion of the sub-section which requires the Inspector to inspect the new Abstract and Alphabetical Indexes appears to

be an unnecessary repetition, as that duty is clearly included in those imposed by sub-section one *ante*.

(6.) To ascertain whether the proper plans required by this Plans, Act have been filed in the several Registry Offices, and where necessary, to enforce the provisions of the law in that respect, and he may instruct the County Crown Attorney to take the necessary proceedings for that purpose ;

Under sections eighty-two and eighty-five *ante*, Enforcing the re-
refusal by a person required thereby to register quire-
the plans or maps referred to therein, subjects ments of
him to a penalty of twenty dollars for each cal- Secs. 82-85
endar month, during which such plans or maps *ante*.
remain unregistered, recoverable in the manner therein set forth. Sections eighty-three and eighty-four *ante* also provides for the registration of maps and plans, and amendments and alterations thereof. As the infliction of a penalty will not tend to lessen the inconvenience and loss which other parties interested might suffer, through such refusal to register the plans or maps, nor to fulfil the policy of the Act in respect to filing maps or plans, the Inspector is here required to see that such plans or maps are duly registered, and, in case of non-compliance by the party, whose duty it is to register them, he can compel such registration through legal proceedings. The Inspector must also ascertain that the maps and plans required to be furnished by the Commissioner of Crown Lands under section ninety-one *ante*, are duly supplied.

(7.) To report upon any vacancies by death or otherwise, in Reporting
the office of Registrar and Deputy Registrar ; vacancies.

Upon the death, resignation, removal or for- See sec-
feiture of office of the Registrar, the Deputy Reg- tion 17
istrar, or senior Deputy Registrar is required by *ante*.
section seventeen *ante* to perform the duties of the

office, until a new appointment is made under section seven *ante*. When a vacancy occurs in the offices of Registrar or Deputy Registrar, the Inspector should be immediately notified, in order that he may report that fact to the Lieutenant-Governor.

Instruction of Registrar in his duties.

(8.) To inform the Registrar how and in what manner he shall do any particular act or amend or correct whatever he may find amiss; and in case he finds the work improperly performed by any Registrar he shall have power to order a new Book or Books to be prepared and completed by the Registrar at his own expense;

Utility of this provision.

One of the chief objects of the inspection of Registry Offices is contained in this sub-section. The remarks at the opening of this chapter are particularly applicable to the duty hereby imposed on the Inspector. The short time that the Inspector has at his disposal, when officially visiting the various offices, necessarily prevents a full and complete conference between him and the Registrar upon the many details that arise in carrying this Act into execution. By this sub-section the information necessary for the instruction of the Registrar can be obtained by correspondence with the Inspector, whose duty it is to accord the necessary information and advice in reply. The latter clause of the sub-section will, no doubt, ensure proper care and attention in the use of the Registry Books.

Sufficiency or insufficiency of sureties. See section 10 *ante*.

(9.) To ascertain the sufficiency or insufficiency of the sureties for the Registrar, and whether they are living or dead; and

By section ten *ante*, the Inspector with the approval of the Lieutenant-Governor, may at any time require the Registrar to execute new recognizances, or to furnish other sureties as might be necessary.

Reporting

(10.) To report upon all such matters, as expeditiously as

may be, to the Lieutenant-Governor for his information and to Lieut.-Governor.
decision. 31 V., c. 20, s. 84.

107. A sum not exceeding two thousand dollars per annum; Pay of In-
which shall include all travelling and other expenses, shall be spector.
allowed to the Inspector of Registry Offices. 31 V., c. 20, s. 71. Present allowance.

Since the passing of this Act the salary of the
Inspector has been reduced to the sum of one
thousand five hundred dollars.

108. No part of this Act shall be read or relied upon to aid Act not to
or affect the construction of any statute heretofore in force. 31 be used to
V., c. 20, s. 85. construe
other
Statutes.

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SCHEDULES.

SCHEDULE "A."

(Section 9.)

FORM OF COVENANT OF REGISTRAR.

Know all Men by these presents, that we, A. B., Registrar of
Esq., and C. D. of Esq., and
E. F., Esq., do hereby jointly and severally
for our and each of our heirs, executors and administrators, cov-
enant and promise, that the said A. B., as Registrar of
shall well, truly and faithfully perform the duties
and obligations of his office as such Registrar, and that neither
he nor his Deputy shall negligently or wilfully misconduct him-
self in his said office to the damage of any person or persons
whomsoever; nevertheless, it is hereby declared that no greater
sum shall be recovered under this covenant against the several
parties hereto than the following, that is to say: against the
said A. B. in the whole, \$ [the amount fixed by Order in
Council]; against the said C. D. and E. F., \$ respectively
[the amount fixed by Order in Council for each].

In witness thereof we have hereunto set our hands and seals
this day of A. D. 18 .
Signed, sealed and delivered in presence of

31 V., c. 20, Form A.

SCHEDULE "B."

(Section 9.)

FORM OF AFFIDAVIT OF JUSTIFICATION.

County of) I., A. B., of
) one of the sureties in the annexed covenant
To wit:) named, make oath and say as follows:
I am seised and possessed to my own use of real (or real and
personal) estate in Ontario of the actual value of \$ over
and above all charges upon, or incumbrances affecting the same.
2. (Where the party has real estate.) The said real estate con-
sists of (describing the property).

3. I am worth (*the amount for which the party has become liable by the covenant*) dollars over and above my just debts,

4. My post office address is as follows: (*insert name of the post office.*)

Sworn before me at _____, in the County of _____,
this _____ day of _____, A.D. 18 _____,
31 V., c. 20, Form B.

SCHEDULE "C."

(Section 16.)

FORM OF REGISTRAR'S OATH OF OFFICE. ONTARIO.

County of _____ } I (*name and describe deponent*) having been appointed by the Lieutenant-Governor of the office of Registrar, in and for the [*name of Registration Division, &c.*] do swear that I will, well truly and faithfully perform and execute all duties required of me, under the laws of this Province, pertaining to the said office, so long as I continue therein, and that I have not given, directly or indirectly, nor authorized any person to give, any money gratuity or reward whatsoever for procuring the said office for me.

Sworn before us at _____, the _____ day of _____, A.D. 18 _____,

A. B., J. P., }
C. D., J. P., } In and for the said County.

31 V., c. 20, Form C.

SCHEDULE "D."

(Section 27.)

FORM OF CERTIFICATE RESPECTING REGISTRY BOOKS.

This Register contains _____ pages exclusive of index, and is to be used in and for the City (or Town, Incorporated Village or Township) of _____, in the County of _____, for the enregistration of deeds, duplicates, and other instruments under the provisions of "The Registry Act," and is provided in pursuance of the requirements of the said Act.

Dated this _____ day of _____, A.D. 18 _____,
A. B., Judge of the County Court of _____, or,
A. B., Warden of the _____

31 V., c. 20, Form D.

APPENDIX.

SCHEDULE "E,"

(Section 38.)

FORM OF AFFIDAVIT OF EXECUTION.

County of _____ } I, _____, of _____,
 To wit. } the _____, in the
 County of _____, make oath

and say:

1. That I was personally present and did see the annexed (or within) _____ (and duplicate, if any, according to the fact) duly signed, sealed and executed by _____ and the parties thereto.

2. That the said _____ (and duplicate, if any, according to the fact) were executed at the _____ of _____

3. That I know the said parties (or one or more of them according to the fact).

4. That I am a subscribing witness to the said _____ (and duplicate, according to the fact).

31 V., c. 20, Form E.

SCHEDULE "F."

(Section 47.)

CERTIFICATE OF COUNTY JUDGE IN LIEU OF AFFIDAVIT OF EXECUTION.
ONTARIO.

County of _____ } I, _____, Judge of the County Court of the County of _____
 To wit: } _____, certify that, from the proof adduced by (name the person producing the proof, and state the evidence given,) I am satisfied of the due execution of the within instrument (or of the instrument whereof the within is a copy, memorial or duplicate, as the case may be). As witness my hand at _____ the _____ day of _____ A.D. 18 _____.

A. B.,

Judge of the County Court of

31 V., c. 20, Form F.

39 V., c. 25, s. 5.

SCHEDULE "G."

(Section 56 and 59.)

FORM OF CERTIFICATE OF REGISTRATION.

I certify that the within _____ is duly entered and registered in the Registry Office for the _____ of the County of _____ at _____ o'clock of the _____ day of _____ A.D. 18 _____ Number.

_____, Registrar,
 or Deputy Registrar.

31 V., c. 20 Form G.

(Section 60.)

Entered and Registered this day of
A.D. at o'clock.

31 V., c. 20. Firm H

(Sections 67 and 69.)

To the Registrar of the County of _____

I _____, of _____, do certify that _____ has satisfied all money due on, or to grow due on (or has satisfied the sum of \$ _____ mentioned in), a certain mortgage made by _____ of _____, to _____, which mortgage bears date the _____ day of _____, A.D. 18____, and was registered in the Registry Office for the County of _____ on the _____ day of _____, A.D. 18____, at _____ minutes past _____ o'clock, _____ noon, in _____ for _____ as No. _____ (here mention the day and date of Registration of each assignment thereof, and the names of the parties,—or mention that such mortgage has not been assigned, as the fact may be) and that I am the person entitled by law to receive the money, and that such mortgage, for such sum of money as aforesaid, or such part of the same as is herein particularly described, that is to say: _____ is to be before discharged.

witness my hand this day of A.D. 18 .
One witness.) A.B.
] 31 V. c. 26 June J.
 36 V. c. 27 + 4

(Section 71.)

FORM OF CERTIFICATE OF DISCHARGE OF MORTGAGE BY SEIGNIUM, ETC.

To the Registrar of the County (Riding or City, as the case
may be) of

I, A. B., of Sheriff of the County of
or Bailiff of the (number) Division Court of the County and City
as the case may be of do certify that by virtue of a
writ of execution wherein C. D. is plaintiff and E. F. defendant.

issued out of Her Majesty's Court of Queen's Bench (or as the case may be) and to me directed, I seized a certain mortgage made by one J. H. of (as described in said mortgage) bearing date the day of A.D. 18 , and registered at of the clock in the noon, Liber , for No. (as the case may be) of the day of in the same year (as the case may be) to E. F. of (as described in the mortgage) the defendant in the said writ of execution named, and such mortgage has not been assigned (or has been assigned to the defendant and such assignment has been registered as follows: *Here set out date and registration of assignment*) and I do further certify that I have levied from the said mortgagor, his executors, administrators or assigns (as the case may be) the full amount of said mortgage, (or \$ parcel of said mortgage) and that such page is therefore discharged (or that such mortgage is, as to \$ parcel of the moneys thereby payable, discharged).

As witness my hand and seal of office (or the seal of the said Court) this day of A.D. 18 .

Witness) Signed,
L. M.)

A. B.
38 V., c. 17, s. 2.

SCHEDULE "L."

(Section 82.)

FORM OF SURVEYOR'S CERTIFICATE OF PLAN.

This plan is correct, and is prepared under the provisions of the "Registry Act."

Signature of Surveyor.
31 V., c. 20, Form K.

APPENDIX.

SCHEDULE "N."—(Sec. 33.)
FORM OF ABSTRACT INDEX.
Township of Vermont, Lot No. _____,
in the 1st Concession.

1.	2.	3.	4.	5.	6.	7.	8.	9.
No. of Instru- ment.	Instru- ment.	Its date.	Date of Registry.	Grantor.	Grantee.	Quantity of Lands.	Consideration in amount of mone- y.	Remarks.
54	Patent	21st Feb., 1820.		Crown.				
72	B. & S.	10th Jan., 1835.	11th Jan., 1835.	David Brown and wife.	John Johns.	All of said lot.	\$300.	
460	B. & S.	30th May, 1830.	15th May, 1838.	John Jones and wife.	Geo. Smith.	$\frac{1}{2}$.	400.	
461	B. & S.	23rd June, 1840.	23rd June, 1840.	George Smith.	David Brown.	$\frac{1}{2}$.	500.	
490	B. & S.	20th Oct., 1841.	do.	Chas. Gates and wife.	Chas. Gates.	$\frac{1}{2}$.	782.	
1009	D. M.	23rd June, 1842.	1st July, 1842.	John Jones and wife.	Geo. Smith.	$\frac{1}{2}$.	500.	
2560	B. & S.	25th April, 1855.	1st May, 1856.	George Smith.	Chas. Gates.	$\frac{1}{2}$.	200.	
2875	B. & S.	1st May, 1860.	1st May, 1860.	Chas. Gates and wife.	Alex. Erie.	All.	800.	
				Alexander Erie.	James Erie.	$\frac{1}{2}$ of the $\frac{1}{2}$ or $\frac{1}{4}$.	\$1 and not love and affection.	D. of 461.

31 V. c. 20, Form L.

SCHEDULE "N."

(Section 34.)

FORM OF ALPHABETICAL INDEX.

No. of Instrument.	Grantor.	Grantee.	No. of Instrument.	Grantee.	Grantor.
1011 1015 1017	A. Abbott, George Allen, William Anderson, James	Black, John	1029	A. Appleton, James Angus, Robert Anson, William	Buck, Peter Cooms, Joseph Whalks, Jane
		Cook, Edward	1039		
		Smith, Thomas	1056		
		1004 1020 1029	B. Bernard, John Burns, Robert Buck, Peter	Green, Edward	1011
Cassels, George	1070				
Appleton, James	1098				
1039 1048 1070	C. Cooms, Joseph Coffee, Richard Crooks, Nelson			Angus, Robert	1015
		Ingram, Benjamin	1020		
		Benson, Jessie	1118		

31 V., c. 20, Form M.

**Allen, William
Burns, Robert
Philip, Richard**

Cook, Edward
Cassels, George
Castor, Simeon

1015
1020
1118

Angus, Robert
Ingram, Benjamin
Benson, Jessie

Cooms, Joseph
Coffee, Richard
Crooks, Nelson

1039
1048
1070

APPENDIX A.

(1) CERTIFICATE OF PAYMENT OF TAXES.

(Sec. 2, ss. 1, *ante.*)

No. _____ Office of Treasurer of the _____ of _____
 \$ _____ day of _____ 188 _____
 I hereby certify that I have this day received from _____
 the sum of _____ dollars, being taxes due, according to _____
 the books of this office, on the following lands, up to the _____
 day of _____ 188 _____ viz. : _____

(Insert description of lands.)

8 1 cts

Entered

In testimony whereof I have hereunto set my hand and affixed the corporate seal of the _____ of _____

A. B.,
Treasurer of

1.S.7

(2) GUARANTEE BOND.

(Sec. 12 ante.)

Know all men by these presents, that we _____ Esquire,
of the _____ in the County of _____
Registrar of the _____ Count of _____ in the
Province of Ontario, Dominion of Canada, hereinafter styled
"the said Principal," and the _____ Company, do hereby
jointly and severally—I, "the said Principal," for myself, my
heirs, executors, and administrators, and the said
Company, for themselves and their successors,—covenant and
promise that "the said Principal," as Registrar of the said
Count of _____ shall well, truly, and
faithfully perform the duties and obligations of his office as such
Registrar; and that neither he nor his Deputy shall negligently
or willfully misconduct himself in his said office, to the damage

of any person or persons whomsoever. Nevertheless it is hereby declared, that no greater sum shall be recovered under this Covenant against the several parties hereto than the following: that is to say against "the said Principal," in the whole the sum of _____ and against the said _____ Company in the whole the sum of _____ dollars respectively.

Provided always, that if the _____ Company shall at any time give three calendar months' notice in writing to the said Registrar, and to the Secretary of the said Province for the time being, of their intention to put an end to the Guarantee hereby entered into, then this Covenant, and all accruing liability on their part, and of their funds and property, shall from and after the last day of such three calendar months aforesaid, cease and terminate in so far as concerns any acts or deeds of "the said Principal" subsequent to such determination, remaining liable, however, hereon, for all or any deeds, acts, or defaults done or committed by "the said Principal" in his said office or employment of Registrar of the _____ Count of _____ aforesaid, from the date of this Covenant up to such determination.

In witness whereof, "the said Principal" hath hereunto affixed his hand and seal, and the said _____ Company have hereunto caused to be affixed their Corporate Seal under the hand of their President, and Manager, this _____ day of _____ in the year of our Lord, one thousand eight hundred and _____

Signed, sealed and delivered
by the said _____

[L.S.]

("the said Principal")
in the presence of _____

Signed, sealed, and delivered
on behalf of the
Company by their President and Manager.

President.

Manager.

Count of _____ } I, _____ the principal in the within instrument named, make oath, and say as follows:

To wit: _____

1. I am seized and possessed to my own use of real estate in the Province of Ontario, of the actual value of _____ dollars, over and above all charges upon and incumbrances affecting the same.

2. The said real estate consists of the lands, tenements and premises following, with the appurtenances, that is to say: "

3. That I am worth the sum of _____ dollars, over and above my just debts, and any sums for which I am liable as surety or otherwise, except upon the said Covenant.

4. My Post Office address is as follows:

Sworn before me, at _____, in the
Count of _____

this _____ day of _____ 18 _____
Justice of Peace in and for the _____ Count of _____

*NOTE.—If the Deponent is not possessed of real estate having a value beyond the incumbrances thereon, the first two clauses should be struck out.

Count of } I, of in the
Province of Ontario. } County of make oath, and
say as follows :

1. I am the person whose name is subscribed to the annexed instrument as the attesting witness to the execution thereof, and that the signature set and subscribed thereto as such attesting witness, is of my proper handwriting, and that my name and addition are correctly above set forth.

2. I was present, and did see the said instrument duly signed and executed by one of the parties thereto.

3. I am well acquainted with the said
Sworn before me, at , in the }
Count of
this day of 18 }
Justice of Peace in and for Count of

(3) NOTICES OF WITHDRAWAL BY SURETY.

(Sec. 14, ante.)

(a) NOTICE TO THE REGISTRAR.

As I am desirous of withdrawing from my position as your surety (or as one of your sureties) for the due performance by you of the duties of your office as Registrar of the (name of Registration Division) I hereby, in pursuance of the provisions of "The Registry Act," beg to notify you that I am no longer disposed to continue my responsibility as such surety.

Dated the day of 188

Yours, &c.,

(Signature of surety.)

To A. B., Esquire,
Registrar of the (name of Registration Division.)

(b) NOTICE TO THE PROVINCIAL SECRETARY.

As I am desirous of withdrawing from my position as surety (or as one of the sureties) for A. B., Esquire, Registrar of the (name of Registration Division) for the due performance by the said A. B. of the duties of his office as such Registrar, I hereby, in pursuance of the provisions of "The Registry Act," respectfully notify you that I am no longer disposed to continue my responsibility as such surety.

Dated the day of 188

Yours, &c.,

(Signature of surety.)

To the Honorable
Secretary for the Province of Ontario,
Toronto.

(4) | APPOINTMENT OF DEPUTY REGISTRAR.

(Sec. 17 ante.)

To all to whom these presents shall come :

Know ye that I, A. B., of the of in the County of Esquire, Registrar of the (*name of Registration Division*), under and by virtue of the power and authority conferred upon me by "The Registry Act" have nominated and appointed, and do hereby nominate and appoint C. D., of the of in the County of (*addition*) to be my Deputy in my office as Registrar aforesaid, to do, perform and execute all the duties required of him, the said C. D., under the laws of this Province, which pertain to the office of a Deputy Registrar.

Given under my hand and seal of office at the of in the County of the day of A. D. 188 .

A. B., [L.S.]
Registrar for the
(*Name of Registration Division*).

(5) DEPUTY REGISTRAR'S OATH OF OFFICE.

(Sec. 18 ante.)

Ontario: } I, C. D., of the of in the County of } County of (*addition*) having been To wit: } appointed by A. B., Esquire, Registrar of the (*name of Registration Division*) to the office of Deputy Registrar for the said (*name of Registration Division*) do swear that I will well, truly and faithfully perform and execute all duties required of me under the laws of this Province, pertaining to the said office, so long as I continue therein; and that I have not given, directly or indirectly, nor authorized any person to give, any money, gratuity or reward whatsoever for procuring my appointment to said office.

Sworn before us at the of in the County of this day of A. D. 188 .
E. F., J. P., }
G. H., J. P., } In and for the said County.

(6) REQUEST TO REGISTRAR TO MAKE SEARCHES.

(Sec. 23 ante.)

To the Registrar (*or* Deputy Registrar) of (*name of Registration Division*.)

Sir,

I hereby request you to make searches for all instruments (*or* for the instruments hereinafter mentioned that is to say, &c.)

which are registered in your office, referring to, mentioning or affecting the following lands (*describing same*.) (*If a personal inspection thereof is desired, add*) and to exhibit to me such original registered instrument, and the Books of the office relating thereto for my personal inspection.

Dated the day of A.D. 188

Yours, &c.,

(*Signature of applicant.*)

(7) REQUEST TO REGISTRAR TO FURNISH ABSTRACT.

(*Sec. 23 ante.*)

To the Registrar (*or* Deputy Registrar) of (*name of Registration Division.*)

Sir,

I hereby request you to furnish me with an Abstract of and concerning all instruments registered in your office, (*if Abstract is desired for a limited period, add, subsequent to the date of registration of instrument number*) referring to, mentioning or affecting the following lands (*describing same*) up to and including the date hereof, and I require that such Abstract shall contain amongst other matters and things the particulars following, that is to say (*set out particulars required.*)

Dated the day of A.D. 188

Yours, &c.,

(*Signature of applicant.*)

(8) REQUEST TO REGISTRAR FOR CERTIFIED COPY.

(*Secs. 23 and 24 ante.*)

To the Registrar (*or* Deputy Registrar) of (*name of Registration Division:*

Sir,

I hereby request you to furnish me with a certified copy (*or exemplification*) under your hand and seal of office of an Indenture of (*giving description of instrument of which copy, &c., is desired*) made between A. B. and C. D., dated the day of and duly entered and registered in your office (*give date of registration and registration number, if known to applicant.*)

Dated the day of A. D., 188 .

Yours, &c.,

(*Signature of Applicant.*)

(9) CERTIFICATE ACCOMPANYING ABSTRACT OF TITLE.

(Sec. 23 ante.)

Registry Office for the (name of Registration Division),

day of A. D. 188 .

I hereby certify that the foregoing (or annexed (thin) Abstract is a true and correct abstract of all instrument entered and registered in the Registry Books of this Office (if abstract for limited period add, subsequent to the date of Registration of Instrument number) up to and including the date hereof which refer to or affect (describing the lands, concerning the title to which the abstract is furnished).

Signature of Registrar,
(or Deputy Registrar).

(10) CERTIFICATE ACCOMPANYING CERTIFIED COPY.

(Secs. 23 and 24 ante.)

Registry Office for the (name of Registration Division),

day of A. D. 188 .

I hereby certify that the foregoing (or annexed, or within) paper writing is a true and correct copy of an Indenture of (describing instrument) purporting to have been made between A. B. and C. D., dated as therein mentioned and duly entered and registered in this office in Liber for the f at o'clock of the day of A as number

As witness my hand and seal of office.

Signature of Registrar,
(or Deputy Registrar.)

[L.S.]

(11) NOTICE OF INTENTION TO PROVE A REGISTERED INSTRUMENT BY PRODUCTION OF A CERTIFIED COPY.

(See Sec. 24 ante.)

In the Court of

A. B.,

Plaintiff,

vs.

C. D.,

Defendant.

Take notice that the Plaintiff (or Defendant) intends at the trial (or other proceeding) of this cause to give in evidence, as proof of the conveyance by way of Bargain and Sale (describing such instrument) of the lands mentioned in the Writ (or in question) in this cause from E. F., of &c., to G. H., of &c., dated the day of A.D., 18 , and also of certain Articles of Agreement between G. H., of &c., and J. K., of &c., relating to said lands, dated the day of A.D. 18 . copies of the said several original instruments certified by the Registrar of the County of under his hand and seal of office.

Dated the

day of

A.D. 188

Yours, &c.,

M. N.,

Plff's Atty. (or Solicitor.)

To O. P., Esq.,

Def't's Atty. (or Solicitor.)

(12) NOTICE DISPUTING THE VALIDITY OF THE ORIGINAL REGISTERED INSTRUMENT.

(See Sec. 24 ante.)

In the Court of

A. B., Plaintiff, } Take notice that the defendant (or Plaintiff) disputes the validity of the alleged conveyance by way of Bargain and Sale (describing such instrument) of the lands mentioned in the Writ (or in question) in this cause from E. F. to G. H., dated the day of A.D. 18 , and also of certain Articles of Agreement between G. H. and J. K. relating to said lands, dated the day of A.D. 18

Dated the day of A.D. 188

Yours, &c.,

To M. N., Esq.,

O. P.,

Plff's Atty. (or Solicitor.)

Def't Atty. (or Solicitor.)

(13) AFFIDAVIT FOR ORDER FOR ISSUE OF SUBPOENA TO REGISTRAR.

(See Sec. 24 ante.)

In the Court of

A. B., Plaintiff, } I, M. N., of the of in the County of Barrister at law make make oath and say:

(1.) That I am the plaintiff's (or defendant's) Attorney in this cause.

(2.) That this action is one of ejectment brought by the above named plaintiff to recover from the above named defendant the possession of a certain parcel of land situate in the Township of in the County of being composed of the Lot number in the Concession of said Township.

(3.) That the defendant has appeared to the Writ and Notice of Trial has been given in this cause for the approaching Assizes in and for the County of to be held at the of in the said County on the day of next.

(4.) That it is material and necessary for the plaintiff (or defendant) upon the Trial of this cause to be able to produce in evidence in support of his title to the lands mentioned in the said Writ, the following instruments and documents (describing them as in manner following, a conveyance by way of Bargain and Sale from E. F. of &c., to G. H., of &c., dated the day of A.D. 18 and certain Articles of Agreement between the said G. H. and J. K., of &c., dated the day of A.D. 18) which instruments and documents (or the memorials thereof) are registered in the Registry Office of the County of and in the custody of X. Y., Esquire, the Registrar of Deeds for said County.

(5.) That the plaintiff (or defendant) is desirous of having said instruments and documents produced at the Trial hereof.

Sworn before me at the of this day of A.D. 188

M. N.

A Commissioner in B. R., &c.)

(See Sec. 24 ante.)

(See Sec. 24, Stat.)

In the Court of

<p>A. B., Plaintiff; vs. C. D., Defendant</p>	<p>{</p>	<p>Upon the application of the Plaintiff's (or <i>Defendant's</i>) Attorney, and upon reading the affidavit of M. N., I do order that a Subpœna <i>duces tecum</i> do issue in this cause directed to X. Y., Esquire, Registrar for the County of requiring him to produce on behalf of the said Plaintiff (or <i>De- fendant</i>) at the trial of this cause the following instruments (describing them as set out in the affidavit of M. N.) Dated at Chambers this day of A. D. 188</p>
	<p>}</p>	<p>Judge (or other officer.)</p>

(See Sec. 24 ante.)

Ontario,
County of } Victoria, by the Grace of God, of the United
Kingdom of Great Britain and Ireland, Queen,
To wit: } Defender of the faith.
{ L. S. To X. Y., Registrar of the County of Greeting,
We command you that all excuses being laid aside
you and every of you be and appear in your proper
{ Law persons before our Justices assigned to take the Assizes
Stamp } in and for the County of (or our Judge of our
County Court of the County of at the sittings

Issued by virtue of an order made by the dated the
day of 188 produced and Filed with me this day. Clerk

by _____ day the _____ day of _____ A.D. 188____
 _____ o'clock in the _____ noon of the same
 day, and so from day to day until the cause
 hereinafter mentioned shall be tried or
 otherwise disposed of to testify all and
 singular those things which you or either of
 you know in a certain cause now pending in
 our Court of _____ at Toronto (or said Court
 for trial at _____) between _____ plaintiff
 and _____ defendant in an action _____ on
 the part of the plaintiff (or defendant) and
 at the said Assizes (or Sittings) to be tried
 by a Jury of the country. And also that
 you bring with you and produce at the time
 and place aforesaid on behalf of the plaintiff
 (or defendant) the following instruments and
 documents affecting or relating to the _____
 Lot number _____ in the _____ Con-
 cession of the Township of _____ in the
 County of _____, that is to say :
 And this you or any of you shall by no
 means omit, under the penalty upon each of
 you of One Hundred Pounds.

Witness _____ Chief Justice (or Judge) of
 our said Court, at _____ the _____ day of _____
 in the year of our Lord one thousand eight
 hundred and _____.

Clerk of the Process (or Clerk')

(16) AFFIDAVIT ON APPLICATION FOR ORDER FOR
ISSUE OF SUBPENA TO REGISTRAR TO PRO-
DUCE ORIGINAL INSTRUMENT.

(See Sec. 24 ante.)

In Chancery

Between

A. B.,

Plaintiff,

and
C. D.,

Defendant.

I, M. N., of the City of Toronto, in the County of York,
Solicitor, make oath and say as follows :

(1.) I am the plaintiff's (or defendant's) Solicitor in this cause

(2.) The replication has been filed herein, and this cause is
now at issue, and the same has been set down for hearing at the
next Sittings of this Honorable Court to be holden at the
of on the day of next.

(3.) That it is material and necessary for the plaintiff (or
the defendant) to give in evidence at the hearing of this cause, a
certain conveyance by way of Bargain and Sale of the lands in
question in this cause from E. F., of &c., to G. H., of
&c., dated the day of A. D. 18 , and also certain
Articles of Agreement between the said G. H. and J. K., of
&c., relating to said lands.

(4.) That said Conveyance and Articles of Agreement are
registered in the Registry Office for the County of .

(5.) That on the day of A. D. 18 I did, on behalf
of the said plaintiff, give notice to O. P., Esquire, Solicitor for
the above named defendant, of the plaintiff's intention to prove
said Conveyance and Articles of Agreement by the production of
copies thereof certified by the Registrar of the said County, under
his hand and seal of office, pursuant to the Statute in that case
made and provided.

(6.) That on the day of A. D. 18 I was served
by the said O. P., Esquire, with a notice disputing the validity
of said Conveyance and Articles of Agreement.

(7.) That (if such be the case) the defendant disputes the valid-
ity of such Conveyance and Articles of Agreement and alleges in
his answer that the same are forgeries.

M. N.

{ Sworn before me at the
of in the County of
this day of A. D. 18
A Commissioner in B. R., &c.

(19) REQUEST FOR NEW REGISTRY BOOK.

(Sec. 25 ante.)

Registry Office for the (name of Registration Division),
day of 188

Sir,

I require a new Registry Book for the Township of (or
other book, describing the same) for use in my office, and request
that I may be furnished with the same at as early a date as
possible (or on or before the day of next)

Yours,

To C. D., Esq.,

Treasurer of the of

A. B.

Registrar

(or Deputy Registrar).

(20) INSPECTOR'S PERMIT TO USE MORE THAN ONE
REGISTRY BOOK.

(Sec. 25 ante.)

In pursuance of the provisions of the twenty fifth section of
"The Registry Act," I do hereby order that the Registrar of the
(name of the Registration Division) shall be at liberty to have
Registry Books for the of to be in use in his
office at the same time.

A. B.

Dated the day of

188

Inspector

(21) DEMAND TO DELIVER UP BOOKS, INSTRUMENTS, &c.

(Sec. 29 ante.)

I hereby require you to deliver up and transfer to me as Registrar of the (name of new Registration Division) all and every the
Registry Books and all other Books and Indexes which have
been kept exclusively for (mention the County, City, Town,
Incorporated Village Township or reputed Township, or place
detached from original Registration Division) the original
memorials and original duplicates of all deeds, conveyances
and wills of, or relating exclusively to, any lands within the
same, and all other instruments and all maps of Cities,
Towns, or Villages within the same heretofore lodged account-
ing to law in your office; also a statement of all titles to lands
within the same, registered before separate Registry Books
were kept for each Township or place, containing a Schedule of
all memorials and other registered instruments hereby required
to be delivered to me also an exact copy of all memorials, wills,

(24) AFFIDAVIT, &c., OF REGISTRAR WHEN
RE-COPYING OLD BOOK.

(Sec. 31 ante.)

County of) I, A. B., of the of in the County
To Wit:) of , Esquire, Registrar of the (name of
Registration Division), do make oath and say (or do declare).

(1.) That in pursuance of an order made by the Inspector of
Registry Offices, dated the day of 188 Liber for
the of in the County of has been duly re-copied
into this book, so far as the same could be deciphered by exam-
ination thereof, and of the original memorial relating thereto.

(2.) That this book contains a true copy of Liber aforesaid
and of the entries and registries therein made and set forth.

Sworn (or declared) before me
at the of in the
County of this A. B.
day of A. D. 188)
A Comm'r, B. R., &c.

(25) CERTIFICATE OF PARTY TAKING AFFIDAVIT
UNDER REG. ACT OF 1846.

(Sec. 43 ante.)

Province of Lower Canada) I hereby certify that this is the
(or other foreign country), indenture referred to in the memorial
To Wit:) and affidavit (or declaration) of exe-
cution of said memorial annexed thereto, which affidavit is made
by A. B., of the of in the of (addition of witness)
and was sworn to this day of 18 before me.

C. D.,

A Commissioner for taking affidavits in
the Queen's Bench in Lower Canada,
under Act 22 Vic., c. 79, Con. Stat. of
Canada.

(26) JURATS OF AFFIDAVITS OF EXECUTION OF
INSTRUMENT MADE OUT OF ONTARIO.

(Sec. 43 ante.)

(A) WHEN MADE IN PROVINCE OF QUEBEC.

(1.) Sworn before me at the of in the County (or
District) of in the Province of Quebec, this day of
A. D. 188 .

A Judge (or Prothonotary, or Clerk, as the case may be) of the
Superior Court (or Circuit Court for the District of) of the
Province of Quebec, in testimony whereof I have hereunto set
my hand (and affixed my seal or the seal of said Court) (1) ;

(1) See Rev. Stat. (Ont.) cap. 62, s. 39.

or

(2.) A Commissioner in B. R., &c., for taking Affidavits in the Province of Quebec in and for the Courts of Ontario;

or

A Notary Public in and for said Province of Quebec, in testimony whereof I have hereunto set my hand and affixed my Notarial Seal.

(B) WHEN MADE IN GREAT BRITAIN OR IRELAND.

(1.) Sworn before me at the of in the County of in that part of the United Kingdom called England (or Scotland or Ireland as the case may be) this day of A. D. 188 .

A Judge of the Supreme Court of Judicature in England, (or of the Court of Session, or the Judiciary Court of Scotland, or of the High Court of Chancery, or of the Court of Queen's Bench, or Common Pleas, or Exchequer, in Ireland, or of the County Courts of the County of (as the case may be) in testimony whereof I have hereunto set my hand (and affixed my seal or the seal of said Court) (1);

or

(2.) Mayor (or other chief magistrate) of the said City (or Borough, or Town Corporate) in testimony whereof I have hereunto set my hand and caused the common seal of the said City (or Borough or Town Corporate) to be hereunto affixed;

or

(3.) A Commissioner authorized to administer oaths in the Supreme Court of Judicature in England (or a Commissioner authorized by the laws of Ontario to take in Great Britain, (or Ireland) affidavits in and for the Courts of the Province of Ontario);

or

(4.) A Notary Public in and for the of in testimony whereof I have hereunto set my hand and affixed my notarial seal.

(C) WHEN MADE IN A BRITISH COLONY OR POSSESSION.

(1.) Sworn before me at the of in the of in Her Majesty's Colony (or Colonial Possession, or Residency, &c., in) of this day of A. D. 188 .

A Judge of a Court of Record (or of the Court of being a Court of Record, or having supreme jurisdiction) in said Colony, &c. In testimony whereof I have hereunto set my hand (and affixed my seal, or the seal of said Court) (1);

or

(2.) (If before the Mayor, &c., use form 26 B. (2) ante);

or

(3.) If before a Notary Public, use form 26 B. (4) ante);

or

(4.) A Magistrate (or Collector) in and for one of Her Britannic Majesty's Possessions in India.

(1) See preceding note.

(The certificate relating to such Magistrate or Collector, is as follows) :

I hereby certify that A. B., before whom the foregoing, *or* written, *or* annexed affidavit (*or* affirmation) was made by (*name of witness*) was on the day when such affidavit (*or* affirmation) was made, a duly qualified Magistrate (*or* Collector) for one of Her Majesty's Possessions in India, as witness my hand this day of 188 at .

C. D.,
Governor of aforesaid.

or

(5.) A Commissioner authorized by the laws of Ontario to take affidavits in Her Majesty's Colony (*or* Possessions, &c.) of in and for the Superior Court of the Province of Ontario.

(D) WHEN MADE IN A FOREIGN COUNTRY.

(1.) Sworn before me at the of in the Kingdom (State, Empire, &c.) of this day of A. D. 188 .

Mayor (*or other Chief Magistrate*) of the said City (*or Borough, or Town Corporate*) in testimony whereof I have hereunto set my hand and caused the Common Seal of the said City (*or Borough, or Town Corporate*) to be hereunto affixed ;

or

(2.) Her Britannic Majesty's Consul (*or* Vice Consul, *or* Consular Agent, *or* Acting Consul, *or* Pro Consul) at the of in the Kingdom (*or* State, Empire, &c.) of and resident therein ;

or

(3.) (If before a Judge of a Court of Record use Form 26, c. (1) *ante*) ;

or

(4.) (If before a Notary Public use Form 26, B. (4) *ante*.)

(27) AFFIDAVIT TO OBTAIN ORDER TO COMPEL SUBSCRIBING WITNESS TO MAKE AFFIDAVIT.

(See Sec. 44 *ante*.)

In the Court of :

In the matter of title to lot number in the concession of the Township of in the County of .

I, A. B., of the of in the County of (*addition*) make oath and say :

(1.) I am the owner (*or mortgagee, &c.*) of certain lands and premises situate, lying and being in the Township of in the County of being composed of (*describe the lands*).

(2.) Among other instruments affecting said lands is a certain Indenture of bearing date the day of one thousand eight hundred and made between C. D. of &c., of the first part and E. F. of &c., of the second part.

(3.) The said Indenture was executed by the said C. D. in the presence of G. H. of the of in the County of (addition) who is the (or a) subscribing witness to the execution of said Indenture, which has never been registered.

(4.) No Affidavit or other proof of the execution of the said Indenture by the said C. D. has been made by the said G. H.

(5.) Being interested in the registration of the said Indenture I have requested the said G. H. to make affidavit or other proof of the execution of the said Indenture by the said C. D. in accordance with the provisions of "The Registry Act," but the said G. H. refuses and neglects to make such affidavit or other proof of such execution (*set out any excuses or reasons (if any) advanced by G. H. for such refusal or neglect*).

(6.) That the said G. H., resides at the of in the County of

(7.) That I am desirous of having the said Indenture duly registered in the Registry Office for the (name of Registration Division) and to that end of obtaining an order of this Honorable Court, to compel the said G. H. to make affidavit or other proof of the execution of the said Indenture by the said C. D.

Sworn, &c.

A. B.

(28) ORDER TO COMPEL A SUBSCRIBING WITNESS TO MAKE AFFIDAVIT OR PROOF OF EXECUTION.

(See Sec. 44 ante.)

In the Court of :

In the matter of the title to Lot number in the concession of the Township of in the County of

Upon the application of and upon reading the affidavit of and the documents and papers referred to therein, I do order that of the of in the County of (addition), upon being paid, or duly tendered by or on behalf of the said his reasonable expenses therefor, do appear and attend before at the of in the County of on the day after the serving of a copy of this order upon him, at the hour of of the clock in the noon, to prove by affidavit, or otherwise, the execution of certain (*describe the conveyance or instrument to be proved*) bearing date the day of 18 made between and , to which (*conveyance or other instrument*) the said is a subscribing witness; (*if the witness is in possession of the instrument to which he is a subscribing witness insert and do bring with him and produce before the said (party before whom he is to make proof) at the time and place aforesaid the said (conveyance or other instrument) hereinbefore mentioned and described*) in order that the same may be duly registered in the Registry Office for the (name of Registration Division) according to the provisions of "The Registry Act."

Dated this day of 188 .

J.

(29) DECLARATION OF ABSENCE OF WITNESS, &c.

(Sec. 47 ante.)

Ontario: } I, of the of in the
County of } County of (addition) do solemnly
To wit: } declare:

(1.) That I was well acquainted with A. B., late (or formerly) of the of in the County of (addition) the witness (or one of the witnesses) to the execution by the therein named (grantor) of the Instrument now shewn to me and marked "A."

(2.) That I am well acquainted with the handwriting and signature of the said A. B., having frequently seen him write, and say that from my knowledge of his handwriting the signature "A. B." set and subscribed to said Instrument as an attesting witness thereto is of the own proper handwriting of the said A. B.

(3.) That the said A. B. departed this life on or about the day of 18 (or is now residing out of the Province of Ontario to wit at the of in the of or has, since the execution of said Instrument, become insane, and is yet of unsound mind and understanding).

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign intituled "An Act for the suppression of Voluntary and Extra-judicial Oaths."

Declared before me at the of in the County of this day of A. D. 188 . } (Signature of Declarant.)
A Comm'r, &c., in B. R. &c.)

(30) CERTIFICATE OF PROOF BEFORE JUSTICES IN SESSION.

(See page 118 ante.)

I do hereby certify to all whom it may concern that proof of the due execution of the within deed has been made at the General Quarter Sessions of the Peace held at , in and for the County (or District) of , and that the majority of the Magistrates present at the said Sessions were satisfied by such proof of the due execution of the within deed.

Given under my hand in Open Session, this day of 18

Certified to

A. B.,
Clerk of the Peace in and for
the of .

J. A.,
Chairman.

J.

(31.) GENERAL FORM OF CERTIFICATE OF CHANCERY PROCEEDINGS FOR REGISTRATION.

(See sec. 49 ante.)

In Chancery :

[Law Stamp.] This is to certify that in pursuance of (*e. g. a Final Order of Foreclosure or by a Vesting Order, &c. &c.*) bearing date the day of A. D. 188 , made by the said Court in a certain cause (*or matter*) therein pending, wherein A. B. is plaintiff and C. D. is defendant (*or in the matter of, &c.*) It was ordered that (*giving substance of the order so far as it relates to the lands affected, describing them*).

And at the request of the said plaintiff (*or defendant or purchaser, &c., &c.*) this certificate is given for the purpose of registration pursuant to the Statute in that behalf (*or in such case made and provided*).

Given under my hand and the seal of the said Court the day of A. D. 188 .

A. H.

Clerk of Records and Writs,
(*or other proper officer.*)

[L.S.]

(32.) CERTIFICATE OF LIS PENDENS.

(See page 127 ante.)

[Law Stamp.] I certify that in a suit or proceeding in Chancery between A. B. of and C. D. of some title or interest is called in question in the following land (*describing it*). Dated at (*stating date and place*).

A. B.

Clerk of Records and Writs,
(*or other proper officer.*)

[L.S.]

(33.) ORDER VACATING REGISTRY OF CERTIFICATE OF LIS PENDENS.

(See page 132 ante.)

In Chancery ;
In Chambers, } day, the day of A. D. 188 .
V. C. }
Between

A. B.,
Plaintiff,
and
C. D.,
Defendant.

Upon the application of the above named defendant (*or plaintiff*) and upon hearing read the Bill of Complaint in this cause and the affidavits of and , it is ordered that the Lis Pendens issued in this cause against (*describe the parcel of land affected by Lis Pendens*) be and the same is hereby vacated and discharged.

(34) CERTIFICATE OF ORDER VACATING LIS PENDENS.

(See page 132 ante.)

In Chancery :

This is to certify that by an Order bearing date the day of A. D. 188 made by the said Court in a certain cause therein pending, wherein A. B. is plaintiff and C. D. is defendant upon the application of the defendant (or plaintiff) the said Court did order that the Lis Pendens issued therein against (describe the parcels of land affected thereby) should be and the same thereby was vacated.

And at the request of the defendant (or plaintiff) this certificate is given for the purpose of registration pursuant to the Statute in that behalf.

Given under my hand and the seal of the said Court this day of A. D. 188

(L. S.)

A. B.,
Clerk of Records and Writs
(or other proper Officer).

(35) CERTIFICATE UPON COPY OF POWER OF ATTORNEY OR SUBSTITUTION.

(See Sec. 50 ante.)

Registry Office for the County of

day of A. D. 188

I hereby certify that the Power of Attorney (or substitution as the case may be) of which the foregoing (or annexed or within) paper writing is a true copy was duly entered and registered in this Registry Office in Book for the of at o'clock in the noon of the day of A. D. 18 as Number

I further certify that this copy is a true copy of the said Power of Attorney (or substitution as the case may be) of which it purports to be a copy, and that the original has been duly deposited in this Office according to the Statute in that behalf.

In testimony whereof I have set my hand and attached my seal of office.

Registrar
(or Deputy Registrar).

(36) CERTIFICATE UPON COPY OF INSTRUMENT (OTHER THAN A WILL.)

(See Sec. 50 ante.)

Registry Office for the County of

day of A. D. 188

I hereby certify that the Instrument (describing same) of which the foregoing (or annexed or within) paper writing is a copy was duly entered and registered in this Registry Office in Book for the of at o'clock in the noon of the day of A. D. 18 as number

I further certify that this copy is a true copy of the Instrument

(*describing same*) of which it purports to be a copy and that the original has been duly deposited in this office according to the Statute in that behalf.

In testimony whereof I have set my hand and attached my seal of office.

Registrar
(or Deputy Registrar.)

(37) AFFIDAVIT REQUIRED ON REGISTERING CROWN GRANT.

(See Sec. 61 *ante*.)

County of } I, of the of in the County
To wit: } of (*addition*) make oath and say:

That I have perused the within (*or annexed*) paper writing and have carefully compared the same with the original Grant from the Crown (*or exemplification of the Grant from the Crown*) whereof it purports to be a copy, and I say that the within (*or annexed*) paper writing is a true and accurate copy of said Grant from the Crown (*or exemplification of the Grant from the Crown*).

Sworn, &c.

(38) AFFIDAVIT OF EXECUTION OF WILL OR CODICIL.

(prior to 6th March, 1834) (1).

(See Sec. 63 *ante*.)

County of } I, A. B., of the of in the County of
To wit: } (*addition*) make oath and say:

(1.) That on the day of A. D. 188 , (*date of execution of will*) I and two other subscribing witnesses thereto, namely C. D. of the of in the County of (*addition*) and G. H. of the of in the County of (*addition*) were personally present and did see the will of which the within (*or annexed*) paper writing is a true copy duly signed (*or acknowledged as the case may be*) by E. F., late of the of in the County of (*addition*) deceased as and for last Will and Testament (*or codicil*)* in the presence of myself and of the said C. D. and G. H., being credible (2) persons, who at request in sight and presence did subscribe several names as attesting witnesses thereto in our respective handwritings.

(2.) That the said Will was so executed of in the said County of .

(3.) That I knew the said E. F. deceased

Sworn before me, &c.

A. B.

(1) See Wills Act 1873, sec. 2.

(2) For definition of "credible" see *Ryan v. Devereux*, 26 U. C. R., 100.

(3) As to what is a sufficient subscription by a witness, see *Walkem on Wills*, p. 196 *et seq.*

(39) AFFIDAVIT OF EXECUTION OF WILL OR CODICIL.

(executed between 6th March, 1834, and 1st January, 1874.)

(See Sec. 63 ante.)

County of } I, A. B., of the of in the
To Wit: } County of (addition) make oath and say:

(1) That on the day of A. D. 18 (date of execution of will), I and another subscribing witness thereto, namely C. D., of the of in the County of (addition) were personally present and did see the Will (or codicil)* of which the within (or annexed) paper writing is a true copy duly executed (or acknowledged as the case may be) by E. F., late of the of in the County of (addition) deceased as and for last Will and Testament in the presence of myself and of the said C. D., being credible witnesses (1), who at request and in sight and presence (or in the presence of each other, as the case may be) did subscribe (2) our several names as attesting witnesses thereto in our respective hand writings.

(2) That the said Will (or codicil) was so executed at the of in the County of .

(3.) That I knew the said E. F. deceased.

Sworn before me, &c.

A. B.

CODICIL.

(40) AFFIDAVIT OF EXECUTION OF A WILL (OR CODICIL).

Executed since 1st January, 1874, or re-executed or re-published since that date.

(See Sec. 63 ante.)

County of } I, , of the of in the County
To Wit: } of (addition) make oath and say:

(1.) That on the day of 18 (date of execution of will) I and another subscribing witness thereto namely C. D., of the of in the County of (addition) were, together personally present and did see the Will (or codicil), of which the within paper writing is a true copy, duly signed, sealed (3), published and declared or acknowledged by the therein named E. F., late of the of in the County of (addition) deceased as witnesses to last Will and Testament (or codicil)* in the presence of myself and of the said C. D.,

A. B.

(1) "Credible" witnesses required by 4 Wm. 4, cap. 1; Ryan v. Devereux, see p. 422 ante.

(2) See note 3 supra.

(3) Sealing alone by testator, without signing will, is not a "due execution," Wms. on Exrs, 77; Walkem on Wills, 179.

present at the same time, who at request, in sight and presence (1) and in the presence of each other did afterwards subscribe our several names as attesting witnesses thereto in our respective handwritings (2).

(2) That the said Will (or codicil) was so executed at the of in the County of

(3) That I knew the said E. F., deceased.

Sworn before me, &c.

A. B.

(41) AFFIDAVIT OF EXECUTION OF A WILL (OR CODICIL) WHERE THE TESTATOR WAS A MARKMAN OR BLIND, &c.

(See Sec. 63 ante.)

(Proceed as in forms 38, 39 and 40 as applicable, down to the asterisk*, then add)" the same having been first duly read over and explained to the said E. F., appearing to thoroughly understand and be satisfied with the same, and making mark thereto" in the presence of, &c. (concluding as in said forms).

(42) AFFIDAVIT ON REGISTERING PROBATE, &c.

(See sec. 63, ante.)

County of } I, of the of in the County
To wit: } of (addition) make oath and say:

That I have perused the within (or annexed) paper writing, and have carefully compared the same with the Probate (or exemplification of Probate) of the last Will and Testament (or with the Letters (or exemplification of Letters) of administration with the will annexed, of the personal estate and effects) of late of the of in the County of (addition) deceased, of which it purports to be a copy, and I say the within (or annexed) paper writing is a true and correct copy of said Probate (or Letters of administration with the will annexed, &c., or exemplification of said Probate or Letters of Administration with the will annexed).

Sworn, &c.

(1) Under the Wills Act, 1873, the testator must sign before the witnesses subscribe their names. Wms. on Exrs., 90; Walkem on Wills, 183.

(2) As to what is a sufficient subscribing by a witness, see Wms. on Exrs., 93; Walkem on Wills, 196.

(43) MEMORIAL OF DEED PRIOR TO REGISTRY
ACT, 1865.

(See secs. 65 and 66, ante.)

A MEMORIAL to be registered of an Indenture made the day of one thousand eight hundred and in pursuance of the Act to facilitate the conveyance of Real Property (or of the Statute in such case made and provided). Between of the First Part (wife of the said party of the First Part of the Second Part if deed is to be with dower) and of the Part whereby the said party of the First Part, for and in consideration of of lawful money of Canada, then paid by the said party of the Part, to the said party of the First Part, the receipt whereof is thereby acknowledged, did grant unto the said party of the part heirs and assigns for ever all and singular that certain parcel or tract of land in the of in the Province of Canada containing by admeasurement (describe the lands).

To have and to hold the said above granted lands and premises unto the said party of the part heirs and assigns to and for and their sole and only use forever (if the wife of Grantor bars her dower, add)

And by the same Indenture it is witnessed that the said party of the second part wife of the said party of the first part thereby barred her dower in the said lands.

Which said Indenture is witnessed by of the of in the County of (addition) and of the of in the County of (addition).

And this memorial is hereby required to be registered by the said grant therein named.

Witness hand and seal the day of in the year of our Lord one thousand eight hundred and

Signed and sealed in presence of

A. B.
C. D.

(Signature of party registering.)

{ L. S. }

(44) AFFIDAVIT ACCOMPANYING MEMORIALS.

(Secs. 65 and 66 ante.)

County of A. B., of the in the County

To Wit: of (addition) in the within or foregoing Memorial named, maketh oath and saith, That he was present, and did see the Indenture, to which the said Memorial relates, duly executed, signed, sealed and delivered by the therein named,

AND that he is a subscribing witness to the execution of the said Indenture. THAT he, this deponent, also saw the said Memorial duly signed and sealed by the therein named for registry thereof, which said Memorial was attested by him, this deponent, and another subscribing witness, and that both said Instruments were executed at the of in the County of

Sworn, &c.

A. B.

(45) MEMORIAL OF A MORTGAGE (PRIOR TO REG. ACT OF 1865.)

(Secs. 65 and 66 ante.)

A MEMORIAL (to be registered) pursuant to the Statute of an Indenture of Mortgage, bearing date the day of one thousand eight hundred and in pursuance of the Act respecting short forms of Mortgages (or other Statute *as the case may be*). Between mortgagor of the first part (wife of the said mortgagor of the second part, *if mortgage is to be with dower*) and mortgagee of the part whereby it is witnessed, that in consideration of of lawful money of Canada then paid by the said mortgagee to the said mortgagor, the receipt whereof is thereby acknowledged, the said mortgagor did grant and mortgage unto the said mortgagee, heirs and assigns forever, all and singular that certain parcel or tract of land and premises situate lying and being in the of in the County of containing by admeasurement (*describe the lands*).

Provided that mortgage to be void on payment of of lawful money of Canada with interest at per cent. per annum as follows (*insert proviso clause for repayment*).

Provided that the said mortgagee, on default of payment, might, on notice, enter upon and sell the said lands.

And it is also witnessed that the said party of the second part, the wife of the said mortgagor, had thereby barred her dower on the said lands.

WHICH SAID INDENTURE is witnessed by of the of in the County of (*addition*) and of the of in the County of (*addition*).

And this Memorial thereof is hereby required to be registered by me, the said mortgagor therein named.

Witness my hand and seal this day of in the year of our Lord one thousand eight hundred and .

Signed and sealed in presence of

B. O.
S. T.

} (*Signature of party registering.*) { L. S. }

(~~S~~) The affidavit accompanying above Memorial is identical with Form (44) *ante*.

(46)

MEMORIAL OF WILL.

(See Secs. 65 and 66 ante.)

A MEMORIAL to be registered pursuant to the Statute of the last Will and Testament of A. B., late of the of in the County of (*addition*) deceased in the words and figures following: (*Copy the will in full, including signatures of testator and witnesses.*)

And which said will is witnessed by C. D., of the of in the County of (*addition*) and E. F. of the of in the County of (*addition*).

And this Memorial thereof is hereby required to be registered

by me, G. H., one of the devisees therein named (or executors, or administrators, or guardians, or trustees).

As witness my hand and seal this day of one thousand eight hundred and

Signed and sealed in the presence of

C. D.

H. J.

G. H.

(L. S.)

(47) AFFIDAVIT ACCOMPANYING MEMORIAL OF A WILL.

(See Secs. 65 and 66 ante.)

County of) C. D., of the of in the County
To Wit:) of (addition) maketh oath and saith:

That he was personally present and did see the therein named A. B. duly sign, seal, execute, publish and declare the instrument in the within (or foregoing) Memorial mentioned to be his last Will and Testament, and that he and E. F. of the of in the County of (addition) are subscribing witnesses to such execution thereof by the said A. B. And he further saith that he was personally present and did see the within named G. H. one of the devisees in the said Will named (or executor, &c., as the case may be) duly execute the within (or foregoing) Memorial for Registry of the said will, and that he and H. J. of the of in the County of (addition) are subscribing witnesses to the execution of the said Memorial, and that both said Instruments were so executed at the of in the County of .

Sworn, &c.

C. D.

(48) MEMORIAL OF INSTRUMENT ENDORSED UPON ANOTHER.

(See page 174 ante.)

MEMORIAL to be Registered of an Indenture dated the day of one thousand eight hundred and endorsed upon an Indenture dated the day of one thousand eight hundred and made between A. B., of the of in the County of (addition) of the first part and C. D. of the of in the County of (addition) of the second part. The Indenture of which this is a Memorial is made between the therein within named C. D. of the first part and E. F. of the of in the County of (addition) of the second part, whereby it is witnessed that the said C. D. for, and in consideration of the sum of of lawful money of Canada (the receipt whereof is thereby acknowledged) by the said Indenture of which this is a Memorial did grant unto the said E. F., his heirs and assigns for ever, all and singular the lands and premises comprised in and conveyed by the Indenture upon which said Indenture, of which this is a Memorial, was endorsed with the appurtenances, and which land and premises are described as follows, that is to say: (insert description from the endorsed Indenture).

To have and to hold the said above granted lands and premises

unto the said E. F., his heirs and assigns, to and for his and their sole and only use forever.

Which said Indenture, of which this is a Memorial, is witnessed by of the of in the County of (addition) and of the of in the County of (addition.)

And this Memorial is hereby required to be registered by the said grant therein named.

Witness my hand and seal the day of in the year of our Lord one thousand eight hundred and .

Signed and sealed in }
presence of } *Signature of party registering.*

R. O.
S. T.

{ L.S. }

~~is~~ The Affidavit accompanying this Memorial is identical with Form (44) *ante*.

(49) CERTIFICATE OF DISCHARGE OF MORTGAGE TO PURCHASER AT SHERIFF'S SALE.

(See page 188 *ante*.)

To the Registrar of the County of .

I, A. B., of , do certify that C. D., of , who has become the purchaser of the interest of E. F., of , has satisfied all money due upon a certain mortgage made by the said E. F., to me, bearing date the day of , one thousand eight hundred and and registered at of the clock in the noon (as the case may be) of the day of , in the same year (or as the case may be), and that such mortgage is therefore discharged. As witness my hand, this day of , one thousand eight hundred and .

(Signed) A. B.

E. H., of , }
G. H., of , } Witnesses.

(50) REQUEST BY BAILIFF TO THE DIVISION COURT CLERK.

(See Sec. 71 ss. 3 *ante*.)

In the Division Court for the County of .
No. A. D. 188 .

Between

A. B., Plaintiff,
and
C. D., Defendant.

I hereby request you to affix the seal of this Honorable Court to a Certificate (or partial certificate) of Discharge of a certain mortgage dated the day of A. D. made by E. F. of &c., to the above named C. D., which was seized and taken in execution by me under a warrant of execution issuing in this cause against the goods and chattels of the said defendant C. D., the said E. F. having paid me the sum of being all (or part) of the moneys secured by said mortgage.

Dated the day of 188 .

Yours,

To K. L.,
Clerk of said Court

G. H.,
Bailiff.

(51) FORM OF SHERIFF'S DEED ON SALE FOR TAXES
PRIOR TO 32 VIC., CAP. 36.

(See page 287, ante.)

These are to witness that in consideration of the sum of
paid to me by A. B., of _____, &c., being the purchaser at public
auction of the parcel or tract of land hereinafter mentioned, sold
to pay assessments under a Writ to me directed, according to the
law in that behalf, I, C. D., Sheriff of the County (or District) of
do, by these presents, grant, bargain and sell unto the
said A. B., his heirs and assigns (*describe the parcel of land sold.*)

To have and to hold the premises hereby bargained and sold,
and all benefit and advantage thereto belonging unto and to the
use of the said A. B., his heirs and assigns forever.

In witness whereof I have hereto set my hand and seal of
office this _____ day of _____ in the year of our Lord

Signed, sealed and delivered
in the presence of _____

C. D.

{ L.S. }

(52)

FORM OF TAX DEED.

(See page 287 ante.)

To all to whom these Presents shall come:

We _____, of the _____ of _____, Esquire, Warden (or Mayor),
and _____ of the _____ of _____, Esquire, Treasurer of the County
(or City or Town) of _____, Send Greeting:—

Whereas by virtue of a warrant under the hand of the Warden
(or Mayor) and seal of the said County (or City or Town) bearing
date the _____ day of _____, in the year of our Lord one thousand
eight hundred and _____, commanding the Treasurer of the
said County (or City or Town) to levy upon the lands hereinafter
mentioned, for the arrears of taxes due thereon, with his costs,
the Treasurer of the said County (or City or Town) did, on the
_____ day of _____, in the year of our Lord one thousand eight
hundred and _____, sell by public auction to _____, of the
_____ of _____ in the County of _____, that certain parcel or tract
of land and premises hereinafter mentioned, at and for the price
or sum of _____ of lawful money of Canada, on account of the
arrears of taxes alleged to be due thereon up to the _____ day of
_____ in the year of our Lord one thousand eight hundred and
_____, together with costs:

Now know ye, that we, the said _____ and _____, as Warden
(or Mayor) and Treasurer of the said County (or City or Town)
in pursuance of such sale, and of "The Assessment Act," and for
the consideration aforesaid do hereby grant, bargain and sell
unto the said _____ his heirs and assigns, all that certain parcel
or tract of land and premises containing _____, being composed
of (*describe the land so that the same may be readily identified.*)

In witness whereof, we, the said Warden (or Mayor) and
Treasurer of the said County (or City or Town), have hereunto
set our hands and affixed the seal of the said County (or City or

Town) this day of in the year of our Lord one thousand eight hundred and , and the Clerk of the County (or City or Town) Council has countersigned.

A. B., Warden,
(or Mayor),
Countersigned, C. D., Treasurer, { Corporate Seal.
E. F., Clerk.

(53) MEMORANDUM TO BE SIGNED BY PERSON OR OFFICER OF CORPORATION FILING PLAN.

(Sec. 82, ss. 2 ante.)

Signed by me, A. B., of the of in the County of (addition) the owner (or one of the owners, or chief officer of (name of corporation) of all that part of the of Lot number in the of in the County of (hereby laid out and surveyed by C. D., Esq., P. L. S.) in whose behalf this map or plan is filed in pursuance of "The Registry Act" and amendments thereto.

Dated the day of , A. D. 188 .
Witness, E. F., } A. B.

(54) CERTIFICATE TO BE SIGNED WHEN PLAN FILED ON BEHALF OF MUNICIPALITIES.

(Sec. 84 ante.)

We hereby certify that this map or plan of all those parcels of Lots numbers and in the of in the County of (hereby laid out and surveyed by C. D., Esq., P. L. S., under the provisions of "The Registry Act") was prepared according to the direction of the Municipal Corporation of the of and in accordance with "The Registry Act."

As witness our hands and the corporate seal of said Municipality this day of A. D. 18 .

Witness } Signature of Reeve (or Mayor),
Signature of Clerk. { L. S.,

55) FORM OF SURVEYOR'S CERTIFICATES OF PLAN.

(Sec. 84 ante.)

This plan is correct, and is prepared according to the direction of the Municipal Corporation of the of and under the provisions of "The Registry Act."

Signature of the Surveyor.

(56) REQUEST TO CLERK OF MUNICIPALITY TO CAUSE
PLAN TO BE MADE AND REGISTERED.

(Sec. 85 ante.)

To A. B., Esq.,
Clerk of the Municipality of _____ :

Sir,—

In pursuance of the provisions of the Registry Act, I hereby request the Municipality of _____ to immediately cause a plan of the Town (or Incorporated Village, or Unincorporated Village) of _____ in the County of _____ to be made upon the scale provided for by that Act, and to cause the same to be registered in the Registry Office for the (name of the Registration Division within which such town or village lies).

Dated the _____ day of _____ 188 .

Yours,

C. D., (the Inspector or
any person interested.)

(57) JUDGE'S CERTIFICATE OF LOSS OF BOOKS.

(Sec. 86 ante.)

I hereby certify that satisfactory proof has been adduced before me by _____ to the effect that the Registry Books, papers and instruments affecting land in the County (or name of Registration Division) described as follows, that is to say:

were lost (or destroyed) prior to the fourth day of March, 1868, and that the memorials of such instruments are not forthcoming.

In witness whereof I have hereunto set my hand, this _____ day of _____ 188 .

A. B.,

Judge of the (name of Court of Record).

(58) REQUEST FOR STATEMENT OF FEES.

(Sec. 94 ante.)

To

The Registrar (or Deputy Registrar) of (name of Registration Division).

Sir,—

I hereby require you to furnish me with a statement in detail of the fees charged by you in respect to the registration of the following instruments, that is to say (describing same), (or in respect of the following services which you allege you have performed at my instance and request (or at the instance and request of A. B.))

Dated the _____ day of _____ 188 .

A. B.,

(or C. D., Agent for A. B.)

(59) REQUEST TO REGISTRAR FOR PAYMENT BY
COUNTY TREASURER.

(Sec. 95 ante.)

Registry Office for the *(name of Registration Division)*,
day of 188 .To the Treasurer of the of ,
Sir,—

I hereby request payment from the municipality of of
the sum of dollars, being the amount of fees and allow-
ances due to me from the municipality of for services
required of and performed by me as Registrar of the of
under the section of the Registry Act.

Yours,
A. B., Registrar,
(or Deputy Registrar.)

APPENDIX B.

LIST OF INSTRUMENTS REQUIRED TO BE REGISTERED UNDER
VARIOUS STATUTES.

AGREEMENTS,

- Relating to line fences, .. R. S. (Ont.), c. 198, s. 12.
 " " School sites, .. " " c. 204, s. 133.
 " " Watercourses, ditches, &c. " c. 199, s. 15.

ALIENS,

- Certificates of naturalization of, .. 31 V. (Can.), c. 66, s. 7.

ALIMONY,

- Orders and decrees for, .. R. S. (Ont.), c. 40, s. 46.

ARBITRATION,

- (1) Memorandum of establishment of board of,
 between masters and servants .. R. S. (Ont.), c. 100, s. 4.
 See AWARDS.

*ASSURANCES OF ESTATES TAIL, (1)

- (1) Assignments of leaseholds, .. R. S. (Ont.), c. 100, s. 39.
 (2) Assurances, .. " c. 100, s. 30.
 (3) Deeds appointing a protector, .. " c. 100, s. 21.
 (4) " of consent by protector, .. " c. 100, s. 35.
 (5) Leases, .. " c. 100, s. 30.

ASSIGNMENTS OF DOWER,

See DOWER.

AWARDS,

- (1) Of fenceviewers, relating to fences, .. R. S. (Ont.), c. 198, s. 9.
 (2) Of arbitrators, relating to
 school sites, .. R. S. (Ont.), c. 204, s. 123, ss. 7
 [& s. 126, ss. 7, & s. 133, c. 206, ss. 18-24.
 (3) Of fenceviewers, relating to
 watercourses, .. R. S. (Ont.), c. 199, s. 12.
 See JOINT STOCK COMPANIES—ONTARIO DRAINAGE.

BY-LAWS,

- (1) Authorizing issue of debentures, .. R. S. (Ont.), c. 176, ss. 25.
 (2) " laying of gas and
 water pipes, &c., .. " c. 157, s. 4.
 (3) Changing name of streets, .. R. S. (Ont.), c. 174, s. 466, ss. 46.
 (4) Opening streets on private
 property, .. " c. 174, s. 507.

- (1) See *Dumble v. Johnson et al.*, 17 U. C. P., 9. In *re Pierre's*
 Estate, 14—I. Ch. R., 452.

CERTIFICATES,

- (1) Of Lis Pendens, (1) R. S. (Ont.), c. 40, s. 90.
 See JOINT STOCK COMPANIES,
 " MECHANIC'S LIENS,
 " ONTARIO DRAINAGE ACT,
 " MARRIED WOMEN,
 " PARTITION,
 " QUIETING TITLES.

CO-OPERATIVE ASSOCIATIONS,

- Certificate of approval of rules, .. R. S. (Ont.), c. 158, s. 6.
 " " alteration of rules, " " " s. 7.
 " " incorporation, .. " " " ss. 1-4.

DOWER,

- (1) Assignment of, by agreement, .. " " c. 55, s. 5.
 (2) Order dispensing with, .. " " c. 126, ss. 8-10.
 (3) Report of Commissioner, .. " " c. 55, s. 39.

DEPOSITIONS, (2)

- Taken before a Surveyor. .. " " c. 146, s. 78.

INSOLVENCY,

- (1) Deed of assignment, copy of, .. 38 V. (Can.), c. 16, s. 19.
 (2) " " reconveyance by Assignee, .. " " s. 60.
 (3) " " transfer, .. " " s. 30.
 (4) Writ of attachment, copy of .. " " s. 19.

JOINT STOCK COMPANIES,

- (1) FOR CONSTRUCTION OF PIERS.
 Instrument of, association of, .. R. S. (Ont.), c. 154, s. 2.
 (2) FOR ERECTION OF EXHIBITION BUILDINGS.
 (a) Instrument of Incorporation of, R. S. (Ont.), c. 155, s. 2.
 (b) Resolutions increasing capital
 stock of, .. 43 Vic. Ont., c. 18, s. 2.
 (3) ESTABLISHMENT OF CEMETERIES.
 (a) Instrument of association and
 Treasurer's receipt, .. R. S. (Ont.), c. 170, s. 2.
 (b) Letters Patent, incorporating, .. 43 V. (Ont.), c. 23, s. 6.
 (4) FOR GAS AND WATER.
 (a) Bylaws of, R. S. (Ont.), c. 157, s. 4.
 (b) Report of, " " s. 23.
 (c) Statement of association of, " " s. 4.
 (d) " " objection to
 payment of dividend, . " " s. 25.
 (5) FOR ROADS.
 (a) Certificate to purchaser of, " " c. 152, s. 124.
 (b) Instrument of incorporation
 of companies, " " s. 4.
 (c) To purchase roads and treas-
 urer's receipt, " " s. 57.

(1) See cases cited on p. 128 *et seq.*

(2) See *Manary v. Dash*, 23 U. C. R., 580.

JOINT STOCK COMPANIES (*Continued*).

- (d) Instrument of Consolidation of, " " " s. 61.
 (e) Record of awards relating to lands, " " " s. 25.
 (f) Resolutions of, concerning improvements of roads and increase of capital, " " " ss. 31, 58.
 (6) FOR TRANSMISSION OF TIMBER.
 (a) Consent to form company, c. 158, s. 4.
 (b) Instrument of incorporation with treasurer's receipt, " " " ss. 5-6.
 (c) List of new shareholders, " " " s. 30.
 (d) Record of award, " " " s. 47.
 (7) WINDING UP.
 Certified copy of resolution or order, 41 V. (Ont.), c. 5, s. 7.

MAPS.

- (1) Lands in Township, 42 V. (Ont.), c. 31, s. 35.
 (2) " " Towns, Villages, &c., R. S. (Ont.), c. 146, ss. 70-75.
 (3) Railway, see Railways.

MARRIED WOMEN.

- (1) Discharge of order of protection, .. R. S. (Ont.), c. 125, s. 9.
 (2) Order of protection, " " " s. 10.
 (3) " " dispensing with execution by husband, " " c. 127, ss. 6, 7.

MECHANIC'S INSTITUTES,

Declaration of intention to establish, c. 168, s. 2.

MECHANIC'S LIEN, (1)

- (1) Certificate of discharge of lien, c. 120, s. 5.
 (2) Certificate of institution of proceedings, R. S. (Ont.), c. 120, ss. 20, 21.
 (3) Order vacating lien, R. S. (Ont.), c. 120, s. 23.
 (4) Statement and affidavit of claim, (2) " " " ss. 4, 5.

MORTGAGES,

- (1) Prior to patent, R. S. (Ont.), c. 25, s. 26.
 (2) Notices of Sale under power, .. 42 V. (Ont.), c. 20, s. 6.

MUTUAL INSURANCE COMPANIES,

Resolutions to establish, R. S. (Ont.), c. 161, s. 7.

ONTARIO DRAINAGE,

- (1) Assessment Roll, " " c. 33, s. 24.
 (2) Award of Arbitrators, " " s. 28.
 (3) Certificate of discharge of rent charge, " " " s. 44.

- (1) See *Arnoldi v. Gouin*, 22 Gr., 314; *Bunting v. Bell*, 23 Gr., 584; *Burritt v. Renihan*, 25 Gr., 183.
 (2) See *Currier v. Friedrich*, 22 Gr., 243; *Boult v. Wellington Hotel Co.*, cited *Holmested Mechanic's Lien Acts*, 15.

ORDERS,

- (1) Of Judge allowing use of water privileges, .. " " c. 114, s. 11.
- (2) Or Rule to set aside fraudulent conveyances, .. " " c. 49, s. 11.

PARTITION,

- (1) Allowance of certificate of, .. " " c. 101, s. 29.
- (2) Apportioning costs in, order, .. " " s. 52.
- (3) Certificate of discharge of mortgage by the Surrogate Court Judge, .. " " s. 57.
- (4) Conveyance by the real Representative, .. " " s. 50.
- (5) Report by the real representative, .. " " s. 38.

PARTNERSHIP, (1)

- (1) Declaration of formation of, .. " " c. 123, s. 1.
- (2) " " dissolution of, .. " " s. 7.
- (3) " " non-association in, .. " " s. 9.
- (4) Authority to sign for absent parties, " " s. 1, s. 2.

PLANS,

See MAPS.

QUIETING TITLES,

- (1) Application to investigate facts, .. R. S. (Ont.), c. 130, s. 36.
- (2) Certificate of application title, .. " " s. 6.
- (3) Certificate of title, .. " " s. 27.
- (4) Conveyance, .. " " s. 31.

RAILWAYS,

- (1) Deeds of Rent charge, .. " " c. 165, s. 17.
- (2) Maps, plans and profiles of, .. R. S. (Ont.), c. 165, s. 10, ss. 13,
[also 42 V. (Can.), c. 9, s. 8, ss. 13.]

RELIGIOUS INSTITUTIONS, (2)

- (1) Conveyance to Trustees, .. R. S. (Ont.), c. 216, s. 15.
- (2) Record of proceedings at meetings, " " c. 216, s. 11.
- (3) " " varying trustees, 42 V. (Ont.), c. 36, s. 4.

RESOLUTIONS,

See Joint Stock Companies 2, 5, 7.
 " Mutual Insurance Companies.
 " Religious Institutions.

(1) See Cassidy, q. t. v.; Henry, 31 U. C. P.; Pinkerton, q. t. v. Ross, 33 U. C. R., 508.

(2) See as to registration of conveyances for religious purposes; In *re* The Methodist Episcopal Church Property in Streetsville, 1 Ch. Cham., 305; In *re* The Second Congregational Church Property Toronto, 1 Ch. Cham., 349; In *re* The Baptist Church Property, of Stratford, 2 Ch. Cham., 388; Doe d. Bowman *et al.* v. Cameron, 4 U. C. R., 155; Hallock v. Wilson, 7 U. C. P. 28; Hamblly v. Fuller, 22 U. C. P., 141; Mercer v. Hewston, *et al.*, 9 C. P., 349.

SCHOOLS,

- (1) Agreement relating to school sites, R. S. (Ont.), c. 206, s. 133.
 (2) Awards " " " R. S. (Ont.), c. 204, s. 123, ss. 7,
 s. 126, ss. 7.

- (3) Conveyance to trustees for school
 purposes, " " " R. S. (Ont.), c. 207, s. 3.

UNIVERSITY DEEDS, &c.,

Deeds, &c., executed by Bursar. . . . c. 211, s. 8.

14, s. 11.

49, s. 11.

01, s. 29.

s. 52.

s. 57.

s. 50.

s. 38.

123, s. 1.

s. 7.

s. 9.

s. 1, ss. 2.

30, s. 36.

s. 6.

s. 27.

s. 31.

55, s. 17.

0, ss. 13.

S, ss. 13.

16, s. 15.

16, s. 11.

36, s. 4.

n, q. t. v.

purposes;

ettsville,

Church

Church

et al. v.

. P. 28;

n, et al.,

APPENDIX C.

TARIFF OF FEES.

NOTE.—Registrars are not confined to the fees and emoluments which are enumerated in the 92nd section of the Registry Act. By various other Statutes they are required to register particular instruments, and to perform certain duties, other than those prescribed by the Registry Act, and their fees and emoluments for so doing are generally provided for by such Statutes. Where Registrars are allowed a stipulated and fixed fee for registering an instrument under any Statute, other than the Registry Act, they cannot, as a general rule, charge a larger fee. If, however, such an instrument does not comply with the form prescribed by the Statute which requires its registration, but contains foreign matter, full registration fee as under the Registry Act can be charged (1). Where, by any Statute, an instrument is required merely to be filed in the Registry Office, no duty being cast upon the Registrar beyond the simple reception and filing away of such instrument, and no fee is prescribed by such Statute, it is submitted that the Registrar is not, under such circumstances, entitled to any fee therefor. The tariff contained in this appendix is, for convenience sake, classified into three parts, the first part including the fees allowed under the first sub-section of the 92nd section of all instruments other than those specifically mentioned in the second and third parts. The fees for the registrations and services referred to in the remaining sub-section of the 92nd section, as well as those which are prescribed by various Statutes are included in the second part; and those instruments which are required to be filed only, and for which Registrars do not appear to be entitled to demand any fee, are enumerated in the third part.

PART I.

Fees prescribed by the 92nd Section—sub-section I.

- | | |
|--|--------|
| (a) For the necessary entries and certificates in registering every instrument (other than those referred to in parts 2 and 3 <i>infra</i>) including the certificate on the duplicate, if any..... | \$0 40 |
| For registering every instrument (other than those referred to in parts 2 and 3 <i>infra</i>) not exceeding 700 words..... | 1 00 |
| Where such instrument exceeds 700 words for each additional 100 words or fractional part thereof, up to 1,400 words..... | 15 |
| For every additional 100 words or fractional part thereof over 1,400 words..... | 10 |
| (b) Where the instrument includes different lots situate in different localities, the registration and copying | |

(1) Ward v. Midland Railway of Canada, 35 U. C. R., 120.

of such including all necessary entries and certificates thereof into the different Registry Books, being considered separate and distinct registrations, the charge is as follows:

For the necessary entries and certificates.....	40
As to each of such separate registrations for each 100 words or fractional part thereof not exceeding 1,400 words.....	15
For every additional 100 words or fractional part thereof over 1,400 words.....	10

For convenience sake the following table is inserted. It is calculated for instruments not exceeding twenty folios, and not requiring registration in more than six separate Registration Books in the Registration Division. Where an instrument either exceeds that number of folios, or requires more registration, the additional fees can, of course, be easily ascertained:

Folios.	1.	2.	3.	4.	5.	6.
7 and under..	\$1 40	\$2 50	\$3 55	\$4 60	\$5 65	\$6 70
7 to 8	1 55	2 80	4 00	5 20	6 40	7 60
8 to 9	1 70	3 20	4 45	5 80	7 15	8 50
9 to 10	1 85	3 40	4 90	6 40	7 90	9 40
10 to 11	2 00	3 70	5 35	7 00	8 65	10 30
11 to 12	2 15	4 00	5 80	7 60	9 40	11 20
12 to 13	2 30	4 30	6 25	8 20	10 15	12 10
13 to 14	2 45	4 60	6 70	8 80	10 90	13 00
14 to 15	2 55	4 80	7 00	9 20	11 40	13 60
15 to 16	2 65	5 00	7 30	9 60	11 90	14 20
16 to 17	2 75	5 20	7 60	10 00	12 40	14 80
17 to 18	2 85	5 40	7 90	10 40	12 90	15 40
18 to 19	2 95	5 60	8 20	10 80	13 40	16 00
19 to 20	3 05	5 80	8 50	11 20	13 90	16 60

PART II.

Fees for the Registrations and Services referred to in the remaining sub-sections of 92nd sec. of the Registry Act, as well as those which are prescribed by various Statutes:

ABSTRACT.

Drawing (containing such particulars as the party searching may require) including certificate.....	\$0 25
If abstract exceeds 100 words, for each additional 100 words.....	15

ABSTRACT INDEX.

Searches relating to the title of any lot as originally patented by the Crown, or as afterwards subdivided into smaller lots, shewn by any registered Map or Plan, not exceeding four references (1).....	25
Each additional reference.....	5
Not to exceed in the whole.....	2 00

ALPHABETICAL INDEX.

Searching for each name in the books of any one Township or other legally defined Municipality....	25
General search for each name not to exceed.....	1 00

(1) See pages 371-2, ante.

Memorandum of establishing board of, between Masters and Servants.....	2 00
--	------

Changing name of street.....	1 00
Authorizing issue of Debentures, see DEBENTURES...	

Of Discharge of Mortgage.....	50
Of Discharge of Rent charge	50
Of payment of Taxes.....	25
Of proceedings or decrees of any Court under Act relating to Registration of Partnerships, see PARTNERSHIP.....	
Other certificates.....	50

Copies of Instruments for each 100 words and fractional part thereof (including certificate).....	10
Under secs. 28, 31 and 32 for each 100 words.....	10

Certified copy of By-law authorizing issue of.....	2 00
Each return relating thereto.....	1 00
Name of each holder or transferee of any number of debentures not exceeding five.....	5-
Over five and not exceeding fifteen.....	70
Over fifteen and not exceeding thirty.....	1 00
Upwards of thirty.....	1 00
Search inspecting each copy of By-Law and examin- ing entries connected therewith.....	1 00

Taken before a Surveyor..... 25

Report of Commissioners in action of.....	\$1 00
---	--------

Each original instrument including search.....	10
Each map or plan.....	10

Resolutions to wind up.....	1	(6)
Instrument of Incorporation of Road companies.....	50	
Instrument of Union.....	50	

Statement and affidavit of..... 1 00

Notice of Sale under Power.....	50
---------------------------------	----

Dispensing with execution by wife.....	1 00
" " " " husband.....	1 00
Of a Judge or Court through a certificate.....	50

Certificate, when required.....	25
Declaration of formation of, not exceeding 200 words.....	50
Each additional 100 words.....	10

PARTNERSHIP (*Continued*).

2 00	Declaration of Dissolution of.....	50
	Each additional 100 words.....	10
1 00	Declaration of non-association of.....	50
	Each additional 100 words.....	10
	Searching Firm Index, each firm.....	10
	Individual Index, each name.....	10

PLAN.

50	Filing same, including all necessary entries.....	1 00
50	Binding same ascertained by Inspector.	
25	Copying " " "	
	Mounting " " "	

SEARCHES.

50	See <i>Abstract Index</i> .	
	" <i>Alphabetical Index</i> .	
	" <i>Debentures</i> .	
10	" <i>Partnership</i> .	
10		

STATEMENT.

2 00	Under secs. 28, 31 and 32 of the Registry Act.....	
1 00	100 words contained therein.....	10

PART III.

List of instruments required to be filed only if a fee is shown, and no fees appear to be allowed to Registrars.

Co-OPERATIVE ASSOCIATIONS.

1 00	Certificate of approval of rules.	
1 00	" " alteration of rules.	
	" " incorporation of.	

JOINT STOCK COMPANIES.

Resolution increasing capital stock.

ROADS.

\$1 00	Instrument of Incorporation of Company to purchase land	
	Treasurer's receipt annexed.	
10	Resolution relating to improving Road, increase of capital stock.	
10		

TRANSMISSION OF TRUSTEE.

List of new Shareholders.

MECHANIC'S INSTITUTE.

Declaration of Intention to establish

MUTUAL INSURANCE COMPANY.

Resolution to establish.

ONTARIO DRAINAGE.

Assessment Roll.

APPENDIX D.

LIST OF PROVINCIAL STATUTES RELATING TO REGISTRATION OF
INSTRUMENT FROM THE INTRODUCTION OF THE REG-
ISTRY LAW TO THE PRESENT TIME.

- (1) 35 Geo. 3, c. 5 (Registry Act of 1795).
- (2) 37 " 3, c. 8.
- (3) 39 " 3, c. 4.
- (4) 58 " 3, c. 8.
- (5) 4 Wm. 4, c. 1, s. 47.
- (6) 4 " 4, c. 16.
- (7) 9 Vic., c. 32.
- (8) 9 " c. 34 (Registry Act of 1846).
- (9) 10 & 11 Vic., c. 9, s. 22.
- (10) 10 & 11 Vic., c. 16.
- (11) 13 & 14 " c. 63.
- (12) 14 & 15 " c. 9.
- (13) 16 Vic., c. 182.
- (14) 16 " c. 187.
- (15) 18 " c. 127.
- (16) Con. Stat. U. C., c. 89.
- (17) Con. Stat. U. C., c. 128, ss. 89, 90.
- (18) 24 Vic., c. 41.
- (19) 24 " c. 42.
- (20) 24 " c. 43.
- (21) 25 " c. 21.
- (22) 26 " c. 41.
- (23) 29 " c. 24 (Registry Act of 1865).
- (24) 29 & 30 Vic., c. 48.
- (25) 31 Vic., c. 20 (Registry Act of 1868).
- (26) 32 " c. 9.
- (27) 32 " c. 27, s. 9.
- (28) 33 " c. 29.
- (29) 34 " c. 24.
- (30) 34 " c. 25.
- (31) 34 " c. 26.
- (32) 34 " c. 27.
- (33) 35 " c. 27.
- (34) 35 " c. 28.
- (35) 35 " c. 29.
- (36) 36 " c. 17.
- (37) 38 " c. 17.
- (38) 39 " c. 7, s. 15.
- (39) 39 " c. 25.
- (40) 42 " c. 20.
- (41) 42 " c. 31, s. 35.

ADD

PAGE.	LINE.	
12,	27, add:—	seal
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14,	14, add to	villa
"	32, after	
15,	14, for " "	add to
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23,		add to
		Coun
28,	22, for " o	
32,	27, add to	
33,	13, for " B	
40,	6, for " B	
41,	last line, fo	
42,	add to	
43,	note (2)	
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63,	25, for " 30	
64,	add to n	
67,	2, for " Ref	
87,	26, for " c. 2	
94,	note (1):	
109,	12, add:—an	purpos
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120,	2, for " th	the ven
122,	note (1):—	
153,	9, for " proc	
153,	12, for " colly	
166,	26, add:—an	affidavit
		than the
		or other

ADDENDA ET CORRIGENDA.

PAGE. LINE.

- 12, 27, add:—an assignment of a mortgage should be under seal; *Tiffany v. Clarke*, 6 Gr., 474. The proper operative words in an assignment of mortgage are "assign, transfer and set over." *Wall v. Leader*, 12 U. C. P., 254.
- 14, 14, add to end of line, "or."
" 32, after word "Township," insert "or incorporated villages."
- 15, 14, for "Appendix B," read "Appendix A."
17, add to note (3):—and see *Scott v. Vosburg*, 16 C. L. J. (N. S.), 299.
- 23, add to note (2):—and see *Smith v. The Municipal Council of U.C.*, *Prescott and Russell*, 10 U.C.R., 282.
- 28, 22, for "officers," read "officer."
32, 27, add to end of line "should."
33, 13, for "B" read "A."
40, 6, for "B" read "A."
41, last line, for "entitled" read "within."
- 42, add to note (2):—see *Cummins v. Moore*, 37 U.C.R., 130.
43, note (2):—for "L. L. C. R." read "L. C. R."
44, 12, add:—the right of action against a Registrar under this section and section 21 *post*, will be barred on the expiry of six years from the date of the commission of the Act complained of and not from the time of discovery, in the absence of fraud, tending to conceal knowledge thereof. *Granger v. George*, 7 D. & R., 730; 5 B. & C., 149.
- 45, 2, for "and," read "an."
56, first foot note (4) add to note:—see *Grainger v. Latham*, 14 Gr., 209.
- 57, add to note (1):—see *Dehart v. Dehart*, 26 U.C.P., 489.
63, 25, for "30th," read "80th."
64, add to note (1):—See *O'Neil v. Carey*, 8 U. C. P., 339.
67, 2, for "Registrar," read "Inspector."
87, 26, for "c. 20," read "c. 2."
94, note (1):—for "J. & S.," read "F. & S."
- 109, 12, add:—an instrument executed in England for the purpose of conveying lands situate in this Province, can be validly registered in Ontario, although not stamped in accordance with the provisions of the English Stamp Acts. See *Murray v. Van Brocklin*, 1 Chy. Cham., 300.
- 120, 2, for "the grantor, the vendor," read "the grantor, the vendee."
- 122, note (1):—for "Tones," read "Jones."
153, 9, for "procedure," read "precedence."
153, 12, for "collocated," read "collocated."
- 166, 26, add:—each codicil must be proved by a separate affidavit of execution, where the witnesses are other than those who witnessed the execution of the will, or other codicils.

PAGE. LINE.

- 173, add to not (2) :—see *Watson v. Sadleir*, 1 Molloy, 585.
- 174, note (3) :—before words "*O'Brien v. Tylee*," insert "But see contrary."
- 181, note (3) :—for "16 W. C. L. T. (N. S.), 76," read "26 Gr., 99; s. c. 5 App. R., 63.
- 182, 6, add:—"It has been held that where one of two mortgagees dies, the survivor can execute a valid discharge of the mortgage. *Dilke v. Douglass et al.*, 5 App. R., 63.
- 186, 21, add:—A mortgagee having executed a statutory certificate of discharge which was incorrectly stated, his agent, in good faith, and in order to make the certificate conform to the intention of the mortgagee, altered the date in the certificate. It was held that, under the circumstances, the alteration was immaterial, and that, as altered, the certificate having stated correctly what was intended by the parties thereto, a bill impeaching the validity of the discharge was dismissed with costs. *Sayles v. Brown*, 16 C. L. J. (N. S.), 196.
- 188, 8, after C. D., insert:—under *Rev. Stat. (Ont.)*, c. 109, a registered memorial of a discharged mortgage is declared to be sufficient evidence of such mortgage without production of the latter, except in so far as the memorial may be proved to be inaccurate.
- 188, 24, add:—The provisions of this section in regard to discharges of mortgage apply only to mortgages of realty. When the moneys secured by a registered mortgage of leasehold property are satisfied, the proper mode to discharge the same is by a re-assignment or deed of release from the mortgagee to the mortgagor.
- 188, 25, for "by," read "to."
- 190, add to note (2) :—See *Burnham v. Galt*, 16 Gr., 417.
- 201, 17, after "hand," insert "and seal."
- 201, 18-20, after "Peace," omit sentence beginning with "as" and ending with "copy."
- 208, 9, add:—Registration of a void will was ineffectual to create a registered title. *Moffatt v. Grover*, 4 U. C. P., 402.
- 209, add to note (2) :—see *Reid v. Whitehead*, 10 Gr., 446.
- 216, add to note (4) :—see *Goodwin v. Williams*, 5 Gr., 539.
- 220, add to note (2) :—*Cherry v. Morton*, 8 Gr., 402.
- 221, 5, add:—priority of date in a registered title prevails over the priority gained by registration, where the conveyance which is registered is not proved to have been executed for a valuable consideration. *McKenny v. Arner*, 8 U. C. P., 46.
- 221, add to note (1) :—as to voluntary assignments of Crown Lands before issue of patent. See *Garside v. King*, 2 Gr., 673.
- 223, add to note (3) :—see *Harkin v. Rabidon*, 7 Gr., 243; *Shaw v. Ledyard*, 12 Gr., 382; *McGregor v. Robertson*, 15 Gr., 543; *Truesdell v. Cook*, 18 Gr., 534; *Johnson v. Sovereign*, 25 Gr., 434; *Dynes v. Bales*,

leir, 1 Molloy, 585.
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 v. Rabidon, 7 Gr., 243.
 882; McGregor v. Rob-
 ll v. Cook, 18 Gr., 534.
 ., 434; Dynes v. Bales.

- PAGE. LINE.
- 25 Gr., 593; Aston v. Innis, 26 Gr., 42; Matthews v. Walker, 26 U. C. P., 67.
- 227, add to note (3):—See Cochrane v. Johnson, 14 Gr., 177.
- 231, add to note (5):—See Wiseman vs. Westland, 1 Y. & J., 117.
- 233, note (1):—before "but" in 2nd line, insert Close v. Belmont, 21 Gr., 317.
- 241, add to note (3):—See Harrison v. Firth, 1 Eq. Ca. 331; Attorney-General v. Wilkins, 17 Beav., 293; McQueen v. Farquhar, 11 Ves., 467; McMurray v. Burnham, 2 Gr., 289.
- 246, add to note (7):—See Graves v. Henderson, 8 Gr., 1; Cameron v. Hutchison, 16 Gr., 526; Munro v. Rudd, 20 Gr., 55.
- 249, note (6):—In 3rd line, for "Hare," read "Hart;" and for "5," read "6"
- 252, add to note (2):—See Gordon v. Lothian, 2 Gr., at p. 295.
- 253, add to note (1):—See Moffatt v. Grover, 4 U. C. P., 402, per McLean J.; Miller v. McGill, 24 U. C. R., 597.
- 255, add to note (1):—See Doe d. Wray v. Morrison, 2 H. & B., 406.
- 258, 21, add:—A defendant in ejectment, who claimed under an unregistered lease, subsequent in date to an unregistered lease, under which the plaintiff claimed, registered his lease, after action brought, but before trial. It was held that the plaintiff was entitled to a verdict, and judgment for his costs. The Judge directed the jury to find that the plaintiff had title when the writ was issued, but that his title expired on the day the defendant registered his lease. Ryan v. Landers, 9 I. C. L. R., 487.
- 263, add to note (4):—See Hodson v. Sharpe, 10 East, 350.
- 263, add to note (5):—See Warburton v. Goie, 1 H. & B., 623; 2 Dow & Clarke, 480.
- 265, 16, after word "that," insert "prior to the Act 36 Vic. c. 44, s. 69."
- 265, 18, for "does," read "did."
- 298, note (1):—for "Green," read "Grover."
- 299, 16, for "1865," read "1868."
- 304, add to note (5):—See Bedford v. Backhouse, 2 Eq. Ca. 165; Wrightson v. Hudson, 1b., 609; Morecock v. Dickens *et al.*, Amb., 678.
- 307, add to note (3):—See Scott v. Vosburgh, 16 C. L. J. (N. S.), 299; Brown v. Gage, 11 Gr., 239.
- 309, 20, after (3), add:—"It is essential for the due protection of an assignee of a mortgage, that the assignment should be registered. Clarke v. Jenkins, 5 Pick., 280; see Vanderkempt v. Shelton, 11 Paige, N. Y. 28."
- 313, note (5), 3rd line:—for "188," read "189."
- 385, add to note (2):—See Clark v. Bryant, 27 Gr., 450; Barker v. Eccles, 17 Gr., 277; Jones v. Beck, 18 Gr., 671.

PAGE. LINE.

345, 2, add:—A form of memorandum is contained in Appendix A.

350, add to note (4):—See Brooks v. Williams, 39 U. C. R., 530.

353, 9, add:—See 42 Vic., c. 31, s. 35.

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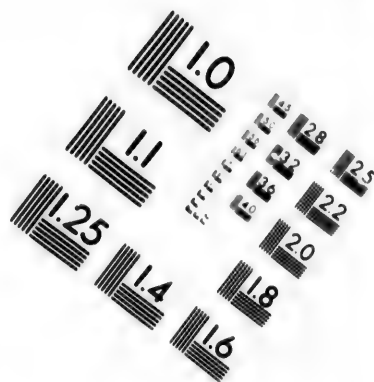
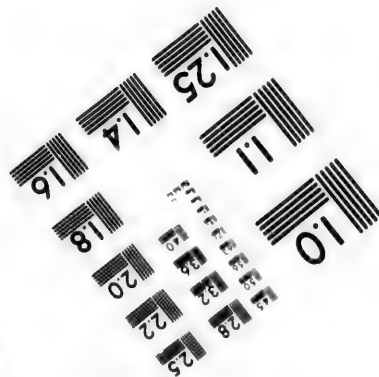
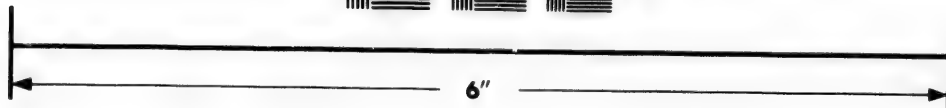
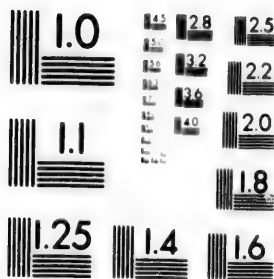


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